

another life. Yes, this is our hope, and thus trusting, we leave him to rest near the waters of the beautiful river St. John, and close beside the city where so much of his life work was done. Farewell departed friend, rest peacefully in thy Southern grave. Thy fame is secure and thy memory will ever be cherished in loving hearts.

Sleep until the shadows  
Take their endless flight,  
Until the morning break,  
Good night! Good night!

The SPEAKER pro tempore. In accordance with the order heretofore made the House will now adjourn.

Accordingly (at 2 o'clock and 30 minutes p. m.) the House adjourned.

## SENATE.

MONDAY, May 4, 1908.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. GALLINGER, and by unanimous consent, the further reading was dispensed with. The VICE-PRESIDENT. The Journal stands approved.

### BUILDINGS AND STRUCTURAL MATERIAL AT SAN FRANCISCO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, by direction of the President, and in response to a resolution of the 28th ultimo, a statement of the results of the investigations into the effects of the earthquake and fire at San Francisco upon buildings and structural materials, which, with the accompanying papers, was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. PERKINS. I ask that 2,000 additional copies of the document be printed. I understand the cost will be less than \$500, and the Department advises me that already applications for over a thousand copies have been received.

The VICE-PRESIDENT. Without objection, the request of the Senator from California is granted, and 2,000 additional copies will be printed.

### TESTS OF FUELS AND STRUCTURAL MATERIALS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, by direction of the President, a statement of the purposes and results of the investigations and tests of the fuels and structural materials of the United States, showing the bearing of these investigations on the conservation of the mineral resources of the country, which, with the accompanying paper, was referred to the Committee on the Geological Survey and ordered to be printed.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, transmitted to the Senate resolutions commemorative of the life and public services of Hon. STEPHEN R. MALLORY and Hon. WILLIAM JAMES BRYAN, late Senators from the State of Florida.

The message also announced that the House had passed the following bill and joint resolution, in which it requested the concurrence of the Senate:

H. R. 17516. An act to increase the membership of the Philippine Commission by one member; and

H. J. Res. 173. Joint resolution for the relief of the sufferers from the cyclone which occurred in the States of Georgia, Alabama, Mississippi, and Louisiana on April 24, 1908.

### PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of Local Union No. 52, International Brotherhood of Paper Makers, Pulp, Sulphite, and Paper Mill Workers, of Kalamazoo, Mich., and a memorial of Local Union No. 69, International Brotherhood of Stationary Firemen, of Millinocket, Me., remonstrating against the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which were referred to the Committee on Finance.

He also presented a petition of the Council of Jewish Women of New York City, N. Y., praying that an appropriation of \$211,000 be made for the purchase, improvement, and maintenance of public playgrounds in the District of Columbia, which was ordered to lie on the table.

He also presented the petition of Charles McCamic, of Moundsville, W. Va., praying for the enactment of legislation to establish a probation and parole system for the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Franklin, N. H., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which was referred to the Committee on the Judiciary.

He also presented a petition of sundry Chinese citizens of Honolulu, Territory of Hawaii, praying for consideration and support by the United States of the important rice industry fostered by Chinese toil in that Territory, and also for the admission of Chinese to that Territory under wise restrictions as to numbers, which was referred to the Committee on Pacific Islands and Porto Rico.

He also presented a petition of sundry citizens of Boston, Mass., tendering, on behalf of the Canadian-born citizens residing in New England, their thanks for the ratification of the treaty of arbitration between the United States and Great Britain, and also praying for the ratification of the treaties now pending between the United States and the Dominion of Canada and Newfoundland, which was referred to the Committee on Foreign Relations.

Mr. RICHARDSON presented petitions of sundry citizens of Wilmington, Del., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. CULLOM presented petitions of sundry citizens of Galesburg, Kewanee, Peoria, Danville, Bloomington, Collinsville, Duquoin, Equality, Coulterville, East St. Louis, Girard, and Harrisburg, all in the State of Illinois, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. GUGGENHEIM presented petitions of sundry citizens and labor organizations of Denver, Colorado Springs, and Curtis, all in the State of Colorado, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. PLATT presented a petition of Niagara Falls Council, No. 247, Knights of Columbus, of Niagara Falls, N. Y., praying for the enactment of legislation making October 12 a national holiday, to be known as "Discovery Day," which was referred to the Committee on the Judiciary.

He also presented a memorial of the Lumen Bearing Company, of Buffalo, N. Y., remonstrating against the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which was referred to the Committee on the Judiciary.

He also presented a memorial of the Fulton Chamber of Commerce, of Fulton, N. Y., remonstrating against the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

He also presented petitions of sundry citizens of Cedarhurst, Far Rockaway, Inwood, and Lawrence, all in the State of New York, praying for the enactment of legislation to restrict the immigration of Asiatics into the United States, which were referred to the Committee on Immigration.

He also presented petitions of sundry citizens of Alden, Brooklyn, Buffalo, Cohoes, Jamaica, Olean, Plattsburg, Port Jervis, Rome, Troy, and Yonkers, all in the State of New York, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. DEPEW presented petitions of sundry citizens and labor organizations of Alden, Cohoes, New York City, Yonkers, Port Jervis, Buffalo, Mount Morris, Albany, Brooklyn, Ithaca, and Plattsburg, all in the State of New York, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

He also presented a memorial of Palmer Amalgamated Local Union, No. 7, International Brotherhood of Paper Makers, Pulp, Sulphite, and Paper Mill Workers, of Palmer, N. Y., remonstrating against the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

Mr. GALLINGER presented a petition of Local Union No. 31, International Union of Carriage and Wagon Workers' Union of North America, of Franklin, N. H., and a petition of Local Union No. 75, International Union of Carriage and Wagon Workers' Union of North America, of Concord, N. H., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

He also presented a petition of the Woman's Christian

Temperance Union of Grand Rapids, Mich., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. DILLINGHAM presented a petition of sundry citizens of Warren, Vt., and a petition of sundry citizens of Strafford, Vt., praying for the passage of the so-called "rural parcels-postal bill," which were referred to the Committee on Post-Offices and Post-Roads.

Mr. CLARK of Wyoming presented sundry petitions of citizens of Evanston, Wyo., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. BRANDEGEE presented petitions of sundry citizens of New Haven, Norwich, Bethel, New London, Meriden, Danbury, Torrington, and Bridgeport, all in the State of Connecticut, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. SCOTT presented petitions of sundry citizens of Elkins, Morleston, and Fairmount, all in the State of West Virginia, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. McLAURIN presented petitions of sundry citizens of McComb, Hattiesburg, and Water Valley, all in the State of Mississippi, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. WARREN presented petitions of sundry citizens of Cheyenne and Evanston, in the State of Wyoming, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. McCREARY presented a petition of sundry citizens of Ludlow, Ky., and a petition of sundry citizens of Paducah, Ky., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. CULLOM. I present a petition signed by sundry citizens of Boston, Mass., in behalf of several hundred thousand American citizens born in Canada and other parts of the British Empire, but now residing in New England, relative to the ratification of the arbitration treaty with Great Britain. I ask that the petition, with the names attached, be printed in the Record and referred to the Committee on Foreign Relations.

There being no objection, the petition was referred to the Committee on Foreign Relations and ordered to be printed in the Record, with the signatures, as follows:

*His Excellency the President and the honorable  
the Senate of the United States:*

The undersigned, on behalf of several hundred thousand American citizens born in Canada and in other parts of the British Empire, residing in New England, and far outnumbering all other citizens of foreign birth within this part of the United States, tender respectful and hearty thanks to His Excellency the President and to the honorable the Senate for the ratification of the arbitration treaty with Great Britain.

This action is to the signers an additional proof of the development of that cordial good feeling and that desire to promote the real interests of humanity which have of late years marked the relations between the two great countries which lead the world in the practical application of the principles of true democracy to the solution of national and international problems alike.

It is almost superfluous, therefore, to do more than allude to the statement lately made by some of our Irish-American fellow-citizens that the Government and people of the British Empire are unfriendly to this country. On the contrary, there exists among all Britons in every part of the world a warm and true friendship and admiration for the Government and the people of the United States, and this to an extent unmatched in any other nation. Abundant proof of this fact is furnished by the history of the relations between the United States and the British Empire within recent years, and the eager desire of Britons in every part of the world to welcome and salute the American fleet on its present historical cruise is sufficient to establish beyond the peradventure of a doubt the existence of this admirable state of feeling.

The signers of this memorial venture further to express the hope that His Excellency the President and the honorable the Senate will ratify the treaties now pending between this country on the one hand and the Dominion of Canada and Newfoundland on the other, convinced as the signers are that such ratification would be for the best interests of the countries concerned, and will tend greatly to cement and perpetuate the existing relations of amity and commerce between the United States and all other English-speaking communities throughout the civilized world.

April 30, 1908.

James H. Stark, 254 Savin Hill avenue, Boston, Mass.; Charles H. McIntyre, 11 Nottingham street, Boston, Mass.; John P. Masters, 903 Boylston street, Boston, Mass.; Henry B. Blackwell, 45 Boutwell avenue, Boston, Mass.; Robert H. Upham, 100 Boylston street, Boston, Mass.; Fred J. Macleod, 15 Beacon street, Boston, Mass.; John H. Bruty, 7 Water street, Boston, Mass.; Geo. Wm. Bentley, 192 State street, Boston, Mass.; Francis F. Flint, 46 Clinton street,

Boston, Mass.; Willard McLeod, 117 Washington street, Boston, Mass.; Asa R. Minard, 34 Oliver street, Boston, Mass.; F. D. Sterritt, 640 Main street, Cambridge, Mass.; Henry W. Patterson, 52 Summer street, Boston, Mass.; Alexander M. Gough, 55 Tremont street, Boston, Mass.; Joseph Gridley, 2443 Washington street, Boston, Mass.; Wilfred E. Harris, 1010 Massachusetts avenue, Cambridge, Mass.; Wellington Fillmore, 24 Arlington, Cambridge, Mass.; John McGaw, 128 Washington street, North Boston, Mass.; Frederick L. Clements, 176 Atlantic avenue, Boston, Mass.; John W. Ude, 102-104 Chamber of Commerce Building, Boston, Mass.; Henry M. Potter, 128 Tremont street, Boston, Mass.; John Gordon, 173 Stratford street, Boston, Mass.; Percy W. Carver, 18 Tremont street, Boston, Mass.; A. G. McKenzie, 156 Charles street, Boston, Mass.

Mr. FORAKER presented petitions of sundry citizens of Cambridge, Portsmouth, Dayton, Shawnee, Fremont, New Straitsville, Zanesville, Alliance, Akron, Midland, Bellaire, Minerva, Tiffin, Massillon, Misco, Midvale, Middletown, Youngstown, Clyde, Springfield, Sandusky, Ashtabula, Cincinnati, Cleveland, Columbus, and East Liverpool, all in the State of Ohio, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. HOPKINS presented sundry memorials of citizens of East St. Louis, Ill., remonstrating against the ratification of the treaty of arbitration between the United States and Great Britain, which were ordered to lie on the table.

He also presented petitions of sundry citizens and labor organizations of Girard, Alton, Equality, Duquoin, Danville, Coulterville, Breese, Decatur, and Belleville, all in the State of Illinois, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. HALE presented sundry petitions of citizens of Rockland, Me., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. PAYNTER presented sundry affidavits to accompany the bill (S. 5546) for the relief of the estate of Mrs. Prudence Hensley, deceased, which were referred to the Committee on Claims.

Mr. CURTIS presented a memorial of the Ministerial Union of Wichita, Kans., remonstrating against the repeal of the present anticanteen law, which was referred to the Committee on Military Affairs.

He also presented a petition of Oak Grange, No. 665, Patrons of Husbandry, of Topeka, Kans., praying for the passage of the so-called "rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of sundry citizens and labor organizations of Osawatimie, Weir, West Weir, Leavenworth, Lawrence, Kansas City, Topeka, Ottawa, Pittsburg, and Coffeyville, all in the State of Kansas, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

He also presented resolutions adopted by McCook Post, No. 51, Department of Kansas, Grand Army of the Republic, of Iola, Kans., extending thanks to the President and Congress of the United States for the passage and approval of the bill granting a pension of \$12 per month to the widows of the soldiers of the civil war, which were referred to the Committee on Pensions.

Mr. RAYNER presented petitions of Butchers' Union No. 90, Bricklayers' Union No. 1, Beer Drivers' Union, Lithographers' Union No. 18, Bartenders' Local Union No. 532, all of Baltimore, in the State of Maryland, praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. du PONT presented a petition of sundry citizens of Wilmington, Del., praying for the adoption of certain amendments to the so-called "Sherman antitrust law" relating to labor organizations, which was referred to the Committee on the Judiciary.

Mr. OVERMAN presented petitions of sundry citizens of High Point, N. C., praying for the adoption of certain amendments to the so-called "Sherman antitrust law," relating to labor organizations, which were referred to the Committee on the Judiciary.

#### PELATIAH WEBSTER'S PLAN OF THE CONSTITUTION.

Mr. CARTER. Mr. President, I present a memorial for reference to the Committee on the Judiciary. The memorial is signed by the distinguished jurist, author, and statesman, Hon. Hannis Taylor, and relates to a historical document of great importance in connection with the constitutional history of this country. It embraces the researches of Mr. Taylor on



this subject, and is unquestionably a contribution of rare interest and value. I ask that the memorial be referred to the Committee on the Judiciary and, likewise, that it be printed in the Record and as a document.

Mr. GALLINGER. Will not the Senator couple his request with a request for some additional copies. I have just been glancing at it, and it is a very important document. I would suggest that a thousand extra copies be printed. It would not cost much.

Mr. CARTER. I will amend the request by asking that 1,000 additional copies of the document be printed.

There being no objection, the memorial was referred to the Committee on the Judiciary and ordered to be printed. One thousand additional copies were ordered to be printed, and the memorial was ordered to be printed in the Record, as follows:

*To the Congress of the United States:*

The purpose of this memorial is twofold: First, to place in the hands of Congress the data for a new and pivotal chapter in the history of the Constitution that will impress upon succeeding generations the all-important fact that every basic principle which differentiates our existing Federal system from all that have preceded it was a part of a single invention struck off at a given time by the brain and purpose of one man; second, to press upon Congress the long-neglected duty of honoring, by an appropriate monument, the memory of an American statesman and patriot who has made a larger personal contribution to the science of government than any other individual in the history of mankind. From the data thus presented it clearly appears that among our national builders Pelatiah Webster stands second to Washington alone. All the world understands in a vague and general way that certain path-breaking principles entered into the structure of our second Federal Government of 1789 which differentiate it from all other systems of Federal Government that have preceded it. M. de Tocqueville gave formal expression to that understanding when he said: "This Constitution, which may at first be confounded with Federal constitutions that have preceded it, rests in truth upon a wholly novel theory which may be considered a great discovery in modern political science. In the confederations that preceded the American Constitution of 1789, the allied States, for a common object, agreed to obey the injunctions of a Federal Government; but they reserved to themselves the right of ordaining and enforcing the execution of the laws of the Union. The American States, which combined in 1789, agreed that the Federal Government should not only dictate, but should execute its own enactments. In both cases the right is the same, but the exercise of the right is different; and this difference produced the most momentous consequences." (*Democracy in America*, vol. 1, pp. 198, 199.) Mr. Gladstone simply reiterated that idea when he said: "As the British constitution is the most subtle organism which has proceeded from progressive history so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." That master of the history of English institutions perfectly understood that as our State constitutions are mere reproductions, mere evolutions, from the English political system, so our second Federal Constitution is a new invention "struck off at a given time by the brain and purpose of man."

That invention of a new type of federal government, embodying, as Tocqueville said, "a wholly novel theory," is so unique that it can no more be confounded with any preceding federal government than a modern mogul engine can be confounded with an ancient stage coach. Did that wonderful invention, which has produced such momentous consequences, have a personal author, like all other inventions, or was it revealed at the same moment, and in some mysterious way, to a large number of persons, thinking and acting in isolation? Upon that humanly impossible or miraculous theory historians of our existing Constitution have attempted to explain the origin of the unique and prearranged plan of Federal Government presented to the Convention which sat at Philadelphia during the one hundred and twenty-five days that intervened between May 14 and September 17, 1787. After deducting recesses and holidays there could not have been more than ninety working days. No one has ever contended, or can ever contend, that the great invention in question was made after the Convention met, for the simple and conclusive reason that it was the basis of all the "plans" save one, carefully constructed beforehand, out of which the Constitution was evolved. Five and only five "plans," all prearranged, were submitted to the Convention, viz, the Virginia plan, the Charles Pinckney plan, the Connecticut plan, the Alexander Hamilton plan, and the New Jersey plan. As the last only proposed a revision of the Articles of Confederation, it may be dismissed from consideration. There were but four plans in which proposals for a new system of Federal Government were embodied, each resting upon the "wholly novel theory" which has produced "the most momentous consequences."

A distinguished specialist has well said that "the Virginia plan became the bedrock of the Constitution." (Meigs, *The Growth of the Constitution in the Federal Convention of 1787*, p. 17.) That plan, which embodied perfectly every phase of the great invention, was drafted by Madison, who began his preparation for the labors of the Convention at least a year before it met. (See *Rives's Life and Times of Madison*, vol. II, p. 208, "Preparations of Madison for labors of Federal Convention.") In December, 1786, we find him in active correspondence with Jefferson, then at Paris, as to the Virginia plan. (See letter of Jefferson to Madison of December 16, 1786, in *Jefferson's Correspondence*, by T. J. Randolph, vol. II, pp. 64, 65.) The marvel is that the historians who are supposed to have explored the sources have never taken the pains to ask this simple and inevitable question: From what common source did the draftsmen of the four plans draw the path-breaking invention which was the foundation of all of them? Let it be said to the honor of those draftsmen that no one of them ever claimed to be the author of that invention. Neither Madison, nor Charles Pinckney, nor Sherman, nor Ellsworth, nor Hamilton, nor any of their biographers, so far as the writer is informed, ever set up such a claim in behalf of any one of them. The answer to "the simple and inevitable question" just propounded is this: The common source from which the draftsmen of the four plans drew the path-breaking invention underlying them all was A Dissertation on the Political Union and Constitution of the Thirteen United States of North America, published at Philadelphia by Pelatiah Webster, February 16, 1783, and there republished by him, with copious notes, in 1791, and herein reproduced

for the first time after the lapse of one hundred and sixteen years. In that immortal paper, whose lightest words are weighty, he gave to the world as his personal contribution to the science of government and as an entirety worked out in great detail the "wholly novel theory" of Federal Government, upon which reposes the existing Constitution of the United States.

Prior to the date in question no single element of that theory had ever been propounded by anyone. In a note appended to the republication of 1791, the great inventor gives the following account of the circumstances under which the invention was made: "At the time when this dissertation was written (February 16, 1783) the defects and insufficiency of the old Federal Constitution were universally felt and acknowledged. It was manifest not only that the internal police, justice, security, and peace of the States could never be preserved under it, but the finances and public credit would necessarily become so embarrassed, precarious, and void of support that no public movement which depended on the revenue could be managed with any effectual certainty, but though the public mind was under full conviction of all these mischiefs and was contemplating a remedy, yet the public ideas were not at all concentrated, much less arranged into any new system or form of government which would obviate these evils. Under these circumstances I offered this dissertation to the public. How far the principles of it were adopted or rejected in the new Constitution, which was four years afterwards (September 17, 1787), formed by the general convention and since ratified by all the States, is obvious to everyone."

At the same time he added: "I was fully of opinion (though the sentiment at that time would not very well bear) that it would be ten times easier to form a new Constitution than to mend the old one. I therefore sat myself down to sketch out the leading principles of that political Constitution, which I thought necessary to the preservation and happiness of the United States of America, which are comprised in this dissertation. I hope the reader will please to consider that these are the original thoughts of a private individual, dictated by the nature of the subject only, long before the important theme became the great object of discussion in the most dignified and important assembly which ever sat or decided in America." The great inventor perfectly understood the merits of his own case which he thus stated with the lucidity of a Greek and the terseness of a Roman. As early as 1781 Pelatiah Webster was the first to propose to the people of the United States, in one of his financial essays published at Philadelphia in May of that year, the calling of "a Continental Convention" for the making of a new Constitution. (The fact that "Alexander Hamilton made the same suggestion in a private letter to James Duane, September 3, 1780," is of no importance. It was not a public act, not even a public declaration. See *Galliard Hunt's Life of James Madison*, p. 108.) In bearing testimony to that fact Madison said that Pelatiah Webster, "after discussing the fiscal system of the United States, and suggesting, among other remedial provisions, one including a national bank, remarks, that 'the authority of Congress is very inadequate to the performance of their duties; and this indicates the necessity of their calling a Continental Convention for the express purpose of ascertaining, defining, enlarging, and limiting, the duties and powers of their Constitution.'" (*The Madison Papers* (1841), vol. II, pp. 706-707.) Two years after he had thus sounded the tocsin for the States to assemble he made the invention and published to the world, in detail, the plan upon which the Constitution was to be formed. While the historian Bancroft (*History of the Constitution of the United States*, vol. I, p. 86) failed to appreciate the stupendous importance of his work, he frankly admits that he actually performed it when he says: "The public mind was ripening for a transition from a confederation to a real government. Just at this time Pelatiah Webster, a graduate of Yale College, in a dissertation published at Philadelphia, proposed for the legislature of the United States a Congress of two Houses which should have ample authority for making laws 'of general necessity and utility,' and enforcing them as well on individuals as on States. He further suggested not only heads of Executive Departments, but judges of law and chancery. The tract awakened so much attention that it was reprinted in Hartford, and called forth a reply." (It was replied to anonymously by Roger Sherman.) In both of the scanty and stingy biographical notices of him in the leading American encyclopedias the statement is made that his plan "is mentioned by James Madison as having an influence in directing the public mind to the necessity of a better form of government." Pelatiah Webster needs the admissions neither of Madison nor Bancroft to establish his title to the authorship of the "wholly novel theory" now embodied in the Constitution of the United States, because that title rests upon contemporary documentary evidence as clear and convincing as that upon which rests Jefferson's title to the authorship of the Declaration of Independence. If that be true, then he has made a larger personal contribution to the science of government than any other one individual in the history of mankind. Among our nation builders he stands second to Washington alone.

And yet among them all he only has been neglected and forgotten by his countrymen, not through any conscious omission, but because of a careless historical scholarship which has failed to present his great achievement in its true light. That conviction has impelled the undersigned, who has devoted more than thirty years to the special study of the origin and growth of our constitutional systems, State and Federal, to present to the Congress herein very briefly the historical data upon which Pelatiah Webster's right to immortality depends. He it was who first suggested the separate existence of the two Houses of Congress, when, in 1783, he said "that the Congress shall consist of two Chambers, an Upper and Lower House, or Senate and Commons, with the concurrence of both necessary to every act, and that every State send one or more Delegates to each House. This will subject every act to two discussions before two distinct Chambers of men equally qualified for the debate, equally masters of the subject, and of equal authority in the decision." Prior to that utterance no federal assembly, ancient or modern, had ever consisted of two chambers; no one had ever suggested such an idea. If after a careful examination of all the facts the Congress shall deem the architect of our Federal Constitution unworthy of a monument, the undersigned prays in his behalf that this humble memorial may be embodied in its records so that succeeding generations may determine for themselves whether or no his work has been justly judged.

*I. Federal governments prior to and including that of 1776.*

From the days of the Greek leagues down to the making of the second Constitution of the United States, all federal governments had been constructed on a single plan, at once clumsy and inefficient. The most perfect of the Greek leagues was the Achaean, of which the framers really knew nothing, as we learn from Madison, who tells us in the *Federalist* (xviii) that "could the interior structure and regular



operation of the Achaian League be ascertained it is probable that more light might be thrown by it on the science of federal government than by any like experiments with which we are acquainted." The coveted knowledge was not accessible because the historical scholars who have since passed beyond the Greece of Thucydides into the Greece of Polybios, who have passed beyond the period in which the independent city commonwealth was the dominant political idea into the later and less brilliant period of Hellenic freedom occupied by the history of Greek federalism, had not then completed their investigations, only fully worked out in very recent years. (The first volume (History of Greek Federations) of Edward A. Freeman's great History of Federal Government was not published until 1863.) Such scanty knowledge as the framers did possess of Greek federalism seems to have been chiefly drawn from the little work of the Abbé Mably, *Observations sur l'Histoire de Grèce* (Federalist, xviii). The only federal governments with whose internal organizations the builders of our Federal Republic were really familiar, and whose histories had any practical effect upon their work, were those that had grown up between the Low Dutch communities at the mouth of the Rhine, and between the High Dutch communities in the mountains of Switzerland and upon the plains of Germany (Federalist, xix, xx). Down to the making of the second Constitution of the United States the confederation of Swiss Cantons, the United Provinces of the Netherlands, and the German confederation really represented the total advance made by the modern world in the structure of federal governments.

Such advance was embodied in the idea of a Federal system made up of a union of States, cities, or districts, representatives from which composed a single Federal assembly whose limited powers could be brought to bear, not upon individual citizens, but only upon cities or States as such. The fundamental principle upon which all such fabrics rested was the requisition system, under which the Federal assembly was only endowed with the power to make requisitions for men and money upon the States or cities composing the league for Federal purposes, while the States, alone, in their corporate capacity possessed the power to execute them. The initial effort of the English colonies in America along the path of Federal union ended with the making of the first Constitution of the United States embodied in the Articles of Confederation. Up to that point nothing new had been achieved; the fruit of the first effort was simply a confederation, constructed upon a plan over two thousand years old, which could only deal through the requisition system with States as States. That Confederation possessed no power (1) to operate directly upon the individual citizen; (2) it had no independent power of taxation; (3) the Federal head was not divided into three departments, executive, legislative, and judicial; (4) the Federal assembly consisted of one chamber instead of two. (See Pelatiah Webster's masterful analysis of the first Constitution contained in his Notes published in 1791, *infra*, p. 48.) The lack of power to levy and collect for itself Federal or national taxes rendered our first Federal Government preeminently a failure as a financial system, dependent as it was upon the will of thirteen independent legislatures.

## II. Pelatiah Webster's invention and the second Federal Constitution of 1787.

The most scientific writer upon finance during the Revolutionary war was Pelatiah Webster, whose essays on that subject fill a volume. (The second edition of 1791 was "printed and sold by Joseph Cruikshank, No. 91 High street," Philadelphia.) He was born at Lebanon, Conn., in 1725 and graduated at Yale College in 1746. In 1755 he removed to Philadelphia, where he became a prosperous merchant, and in due time an ardent supporter of the patriot cause in the war of the Revolution, aiding with pen and purse. He was captured by the British, and, on account of his ardor, was imprisoned for four months. As early as October, 1776, he began to write on the currency, and in 1779 he commenced the publication at Philadelphia of a series of "Essays on free trade and finance." He was sufficiently important as a political economist to be consulted by the Continental Congress as to the resources of the country. His financial studies soon convinced him that no stable fiscal system could be established until the then existing Federal Government was wiped out and superseded by one endowed with independent taxing power. Therefore, as early as 1781, in one of his financial essays, he made the first public call for the "Continental Convention," referred to by Madison, to be armed with power to devise an adequate system of Federal Government. Having thus taken the first step, he set himself to work to formulate in advance such an adequate system as the convention should adopt, whenever it might meet. In the great tract published at Philadelphia February 16, 1783, we have photographed for us the workings of his mind as he moved along paths never trod before. He sounded the keynote when he declared: "They (the supreme power) must therefore of necessity be vested with a power of taxation. I know this is a most important and weighty truth, a dreadful engine of oppression, tyranny, and injury, when ill-used; yet, from the necessity of the case, it must be admitted.

"For to give a supreme authority a power of making contracts without any power of payment—of appointing officers, civil and military, without money to pay them; power to build ships without any money to do it with, a power of emitting money without any power to redeem it, or of borrowing money without any power to make payment, etc.—such solecisms in government are so nugatory and absurd that I really think to offer further argument on the subject would be to insult the understanding of my readers. To make all these payments dependent on the votes of thirteen popular assemblies, who will undertake to judge of the propriety of every contract and every occasion of money and grant or withhold supplies according to their opinion, while at the same time the operations of the whole may be stopped by the vote of a single one of them, is absurd." Thus Pelatiah Webster proposed the existing system of Federal taxation, then entirely new, to the world; thus he proposed that the ancient system of requisitions resting on the taxing power of the State should be superseded by a system of Federal or national taxation extending to every citizen, directly or indirectly. Instead of the lifeless system of absurdity embodied in the Articles of Confederation, he proposed to substitute a self-executing and self-sustaining national system, based on the following propositions, stated in his own language: "The supreme authority of any State must have power enough to effect the ends of its appointment, otherwise these ends can not be answered and effectually secured."

"I begin with my first and great principle, viz. that the Constitution must vest powers in every department sufficient to secure and make effectual the ends of it. The supreme authority must have the power of making war and peace, of appointing armies and navies, of appointing officers both civil and military, of making contracts, of emitting, coining, and borrowing money, of regulating trade, of making treaties with foreign powers, of establishing post-offices, and, in

short, of doing everything which the well-being of the Commonwealth may require and which is not compatible to any particular State, all of which require money and can not possibly be made effectual without it. \* \* \* This tax can be laid by the supreme authority much more conveniently than by the particular assemblies, and would in no case be subject to their repeals or modifications; and of course the public credit would never be dependent on or liable to bankruptcy by the humors of any particular assembly. \* \* \* The delegates which are to form that august body, which are to hold and exercise the supreme authority, ought to be appointed by the States in any manner they please." In formulating his conclusions as to the supremacy of Federal law acting directly on all citizens, he said: "(1) No laws of any State whatever which do not carry in them a force which extends to their effectual and final execution can afford a certain or sufficient security to the subject—this is too plain to need proof. (2) Laws or ordinances of any kind (especially of august bodies of high dignity and consequence) which fail of execution are much worse than none; they weaken the government; expose it to contempt. \* \* \* A government which is but half executed or whose operations may all be stopped by a single vote, is the most dangerous of all institutions."

"Further, I propose that if the execution of any act or order of the supreme authority shall be opposed by force in any of the States (which God forbid!) it shall be lawful for Congress to send into such State a sufficient force to suppress it. On the whole, I take it that the very existence and use of our Union effectually depends on the full energy and final effect of the laws made to support it; and therefore I sacrifice all other considerations to this energy and effect, and if our Union is not worth this purchase we must give it up—the nature of the thing does not admit any other alternative." In these ringing terms was announced the path-breaking invention of a supreme and self-executing Federal Government operating directly upon the citizen; an invention for which the world had been waiting for 2,000 years; an invention of which no trace or hint is to be found in the constitutions of any of the Teutonic leagues, in the Articles of Confederation, or in the prior utterance of any other man.

Having thus defined his fundamental concept of a Federal government operating directly on the citizen, the great one boldly accepted the inevitable corollary that such a government must be strictly organized and equipped with machinery adequate to its ends—with the usual branches, executive, legislative, and judicial; with its army, its navy, its civil service, and all the usual apparatus of a government, all bearing directly upon every citizen of the Union without any reference to the government of the several States. No such federal government, ancient or modern, had ever existed. As Montesquieu was the first to point out, the division of state powers into executive, legislative, and judicial, originated in that single State in Britain we call England. (Spirit of Laws, bk. xi, ch. 6.) From that single State the principle passed into the single States of the American Union. (Federalist, xvi.) Pelatiah Webster was the first to conceive of the application of the principle of the division of powers to a federal state; he was the first to propose that the federal head should be divided and then organized as the particular ones are into legislative, executive, and judicial. More than three years later Jefferson indorsed that idea by commending it to Madison. (In the letter written from Paris, December 16, 1786, heretofore cited.) Having thus made his second great invention, Webster proceeded to explain how the three departments, executive, legislative, and judicial, should be organized. His idea was that the executive power should be vested in a council of ministers to be grouped around a President elected by Congress. On that subject he said: "These ministers will of course have the best information and most perfect knowledge of the state of the nation, as far as it relates to their several departments, and will of course be able to give the best information to Congress in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole. The financier manages the whole subject of the revenues and expenditures; the secretary of state takes knowledge of the general policy and internal government; the minister of war presides in the whole business of war and defense; and the minister of foreign affairs regards the whole state of the nation, as it stands related to or connected with all foreign powers."

"I would further propose that the aforesaid great ministers of state shall compose a council of state, to whose number Congress may add three others, viz. one from New England, one from the Middle States, and one from the Southern States, one of which to be appointed President by Congress." To the organization of the legislative department Webster gave elaborate consideration. Just as no prior federal government had ever been divided into three departments, so no prior federal legislature had ever been divided into two houses.

The one-chamber body represented by the Continental Congress was the type of every other federal assembly that had ever preceded it. As stated heretofore the path breaker, looking to the English bicameral system as it had appeared in the several States, proposed "That the Congress shall consist of two chambers, an upper and lower house, or senate and commons, with the concurrence of both necessary to every act; and that every State send one or more delegates to each house; this will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject, and of equal authority in the decision." Citizens of the United States, to whom such a division now seems a matter of course, should remember that when Webster proposed it, it was an unprecedented novelty in the history of the world, so far as federal legislatures are concerned. After an elaborate discussion of the qualifications of Members of Congress, in which he sharply assailed the then existing rule forbidding their reelection, he proceeded to define a part of the original jurisdiction of the Supreme Court of the United States by saying "That the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States." He also said, "To these I would add judges of law and chancery." Thus the entire Federal judicial system was distinctly outlined. Above all, he was careful to define the reserved powers of the States. On that subject he said: "I propose further, that the powers of Congress, and all the other departments acting under them, shall all be restricted to such matters only of general necessity and utility to all the States as can not come within the jurisdiction of any particular State, or to which the authority of any particular State is not competent, so that each particular State shall enjoy all sovereignty and supreme authority to all intents and purposes, excepting only those high authorities and powers by them delegated to Congress for the purposes of the General Union." In that passage we have the first draft, and a very complete one, of the tenth amendment. It provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to



the people." So it is a matter of documentary evidence that every element that entered into the "wholly novel theory, which may be considered a great discovery in modern political science," and which differentiates our second Federal Constitution of 1789 from every other that preceded it, was the deliberate invention of Pelatiah Webster, who announced to the world that theory, as an entirety, in his epoch-making paper of February 16, 1783. Prior to that date no federal government had ever existed (1) that operated directly on the individual citizen; (2) no federal government had ever been divided into three departments—executive, legislative, and judicial; (3) no federal legislature had ever been divided into an upper and lower house. There is no record, there is not even a claim that, prior to that date, any human being had ever propounded any one of those principles in connection with a federal government. The great inventor was so conscious at the time of the magnitude of the undertaking that he exclaimed as he wrote:

"May Almighty wisdom direct my pen in this arduous discussion." In conclusion he said: "This vast subject lies with mighty weight on my mind, and I have bestowed on it my utmost attention, and here offer the public the best thoughts and sentiments I am master of. . . . I have not the vanity to imagine that my sentiments may be adopted; I shall have all the reward I wish or expect if my dissertation shall throw any light on the great subject, shall excite an emulation of inquiry, and animate some abler genius to form a plan of greater perfection, less objectionable, and more useful." In his republication of 1791 he described perfectly the circumstances under which the great invention of February 16, 1783, was made, when he said that "The public ideas were not at all concentrated, much less arranged into any new system or form of government, which would obviate these evils. Under these circumstances I offered this dissertation to the public." In that dissertation Pelatiah Webster presented, as a free gift to the great country that has neglected and forgotten him, the "new system or form of government" which passed, through the four plans" (at a later time a grave controversy arose as to "the singularly minute coincidences between the draft of a Federal government communicated by Mr. Charles Pinckney, of South Carolina, to Mr. Adams, Secretary of State," the Virginia plan, and the Constitution as finally adopted. Every explanation was given of "the singularly minute coincidences," except the plain and obvious one—the four plans out of which the Constitution arose were taken from a common source. For a statement of the controversy in question see Rives' *Life and Times of Madison*, vol. II, pp. 353-357) offered in the Federal Convention of 1787, into the existing Constitution of the United States. Certainly no more "wonderful work was ever struck off at a given time by the brain and purpose of man." The outcome of that work was a novel and unique creation operating directly on the people, and not upon the States as corporations. The State governments are not subject to the central government. The people are subject to both governments. The new creation is in no respect Federal in its operation, although it is in some respects Federal in its organization. No one of the three basic principles constituting the great invention was seriously questioned in the convention. Its mighty and immortal task involved only their adaptation to very difficult and complex political conditions. The inventor of the plan stands to the members of the convention as an architect stands to master builders.

As an evidence of the highly practical temper of Pelatiah Webster the fact should be mentioned in conclusion that, having been a successful merchant, his pet hobby seems to have been to create a Department of Commerce in close touch with Congress. He said: "I therefore humbly propose, if the merchants in the several States are disposed to send delegates from their body, to meet and attend the sitting of Congress, that they shall be permitted to form a chamber of commerce, and their advice to Congress be demanded and admitted concerning all bills before Congress, as far as the same may affect the trade of the States." In his criticisms made in 1791 of the work of the Federal Convention he said that its failure to accept that suggestion was a great mistake. The very recent creation of a Department of Commerce and Labor has at last effectuated his idea. Only through the vista of receding years can such an epoch-making mind be viewed in all its grandeur. What signifies a century of neglect passed in the midst of the "momentous consequences" his mighty work wrought. His time is at hand; his fame is as safe and as certain as the immortality of thought and the unerring justice of the tribunal of history. His abiding faith in the justice of that tribunal he clearly expressed when he said: "But if any of these questions should in future time become objects of discussion, neither the vast dignity of the convention, nor the low unnoticed state of myself, will be at all considered in the debates; the merits of the matter and the interests connected with or arising out of it will alone dictate the decision."

The humanly impossible and miraculous theory which has heretofore serenely assumed that the greatest and most unique of all political inventions had no inventor, can not survive a method of historical investigations, that undertakes to demonstrate that beneath every shell there is an animal, behind every document there is a man. The eminent French critic and historian, Ch. V. Langlais, has said: "History is studied from documents. Documents are the traces which have been left by the thoughts and actions of men of former times. There is no substitute for documents—no documents, no history." Strange, indeed, it is that the most important document connected with our constitutional history should now be presented to the jurists and statesmen of the United States as if it were a papyrus from Egypt or Herculaneum.

III. *The epoch-making document of February 16, 1783, in which is embodied the first draft of the existing Constitution of the United States: A dissertation on the political Union and Constitution of the thirteen United States of North America, which is necessary to their preservation and happiness, humbly offered to the public. (First published in Philadelphia, 1783.)*

I. The supreme authority of any state must have power enough to effect the ends of its appointment, otherwise these ends can not be answered and effectually secured; at best they are precarious. But at the same time,

II. The supreme authority ought to be so limited and checked, if possible, as to prevent the abuse of power or the exercise of powers that are not necessary to the ends of its appointment, but hurtful and oppressive to the subject; but to limit a supreme authority so far as to diminish its dignity, or lessen its power of doing good, would be to destroy or, at least, to corrupt it and render it ineffectual to its ends.

III. A number of sovereign states uniting into one commonwealth, and appointing a supreme power to manage the affairs of the union,

do necessarily and unavoidably part with and transfer over to such supreme power so much of their own sovereignty as is necessary to render the ends of the union effectual; otherwise their confederation will be a union without bands of union, like a cask without hoops, that may and probably will fall to pieces as soon as it is put to any exercise which requires strength.

In like manner, every member of civil society parts with many of his natural rights, that he may enjoy the rest in greater security under the protection of society.

The Union of the Thirteen States of America is of mighty consequence to the security, sovereignty, and even liberty of each of them and of all the individuals who compose them; united under a natural, well-adjusted, and effectual Constitution, they are a strong, rich, growing power, with great resources and means of defense, which no foreign power will easily attempt to invade or insult; they may easily command respect.

As their exports are mostly either raw materials or provisions and their imports mostly finished goods, their trade becomes a capital object with every manufacturing nation of Europe and all the southern colonies of America; their friendship and trade will, of course, be courted, and each power in amity with them will contribute to their security.

Their union is of great moment in another respect; they thereby form a superintending power among themselves that can moderate and terminate disputes that may arise between different States, restrain intestine violence, and prevent any recourse to the dreadful decision of the sword.

I do not mean here to go into a detail of all the advantages of our union; they offer themselves on every view and are important enough to engage every honest, prudent mind, to secure and establish that union by every possible method, that we may enjoy the full benefit of it and be rendered happy and safe under the protection it affords.

This union, however important, can not be supported without a constitution founded on principles of natural truth, fitness, and utility. If there is one article wrong in such constitution, it will discover itself in practice by its baleful operation and destroy or at least injure the union.

Many nations have been ruined by the errors of their political constitutions. Such errors first introduce wrongs and injuries, which soon breed discontents, which gradually work up into mortal hatred and resentments; hence inveterate parties are formed, which, of course, make the whole community a house divided against itself, which soon falls either a prey to some enemies without, who watch to devour them, or else crumble into their original constituent parts and lose all respectability, strength, and security.

It is as physically impossible to secure to civil society good cement of union, duration, and security without a constitution founded on principles of natural fitness and right as to raise timbers into a strong, compact building which have not been framed upon true geometric principles; for if you cut one beam a foot too long or too short, not all the authority and all the force of all the carpenters can ever get it into its place and make it fit with proper symmetry there.

As the fate, then, of all governments depends much upon their political constitutions, they become an object of mighty moment to the happiness and well-being of society; and as the framing of such a constitution requires great knowledge of the rights of men and societies, as well as of the interests, circumstances, and even prejudices of the several parts of the community or commonwealth for which it is intended, it becomes a very complex subject, and of course requires great steadiness and comprehension of thought, as well as great knowledge of men and things, to do it properly. I shall, however, attempt it with my best abilities, and hope from the candor of the public to escape censure if I can not merit praise.

I begin with my first and great principle, viz: That the Constitution must vest powers in every department sufficient to secure and make effectual the ends of it. The supreme authority must have the power of making war and peace—of appointing armies and navies—of appointing officers both civil and military—of making contracts—of emitting, coining, and borrowing money—of regulating trade—of making treaties with foreign powers—of establishing post-offices, and in short of doing everything which the well-being of the Commonwealth may require, and which is not compatible to any particular State, all of which require money, and can not possibly be made effectual without it.

They must therefore of necessity be vested with a power of taxation. I know this is a most important and weighty truth, a dreadful engine of oppression, tyranny, and injury, when ill used; yet, from the necessity of the case, it must be admitted.

For to give a supreme authority a power of making contracts, without any power of payment; of appointing officers, civil and military, without money to pay them; a power to build ships, without any money to do it with; a power of emitting money, without any power to redeem it, or of borrowing money, without any power to make payments, etc.—such solecisms in government are so nugatory and absurd that I really think to offer further argument on the subject would be to insult the understanding of my readers.

To make all these payments dependent on the votes of thirteen popular assemblies, who will undertake to judge of the propriety of every contract and every occasion of money and grant or withhold supplies, according to their opinion, while at the same time the operations of the whole may be stopped by the vote of a single one of them, is absurd; for this renders all supplies so precarious and the public credit so extremely uncertain as must in its nature render all efforts of war and all regular administration in peace utterly impractical as well as most pointedly ridiculous. Is there a man to be found who would lend money or render personal services or make contracts on such precarious security? Of this we have a proof of fact, the strongest of all proofs, a fatal experience, the surest though severest of all demonstration, which renders all other proof or argument on this subject quite unnecessary.

The present broken state of our finances, public debts and bankruptcies, enormous and ridiculous depreciation of public securities, with the total annihilation of our public credit, prove beyond all contradiction the vanity of all recourse to the Federal assemblies of the States. The recent instance of the duty of 5 per cent on imported goods struck dead, and the bankruptcies which ensued on the single vote of Rhode Island, affords another proof of what it is certain may be done in like circumstances.

I have another reason why a power of taxation or of raising money ought to be vested in the supreme authority of our Commonwealth, viz, the moneys necessary for the public ought to be raised by a duty imposed on imported goods, not a bare 5 per cent or any other per cent on all imported goods indiscriminately, but a duty much heavier on all

articles of luxury or mere ornament and which are consumed principally by the rich or prodigal part of the community, such as silks of all sorts, muslins, cambrics, lawns, superfine cloths, spirits, wines, etc.

Such an impost would ease the husbandman, the mechanic, and the poor; would have all the practical effects of a sumptuary law; would mend the economy and increase the industry of the community; would be collected without the shocking circumstances of collectors and their warrants, and make the quantity of tax paid always depend on the choice of the person who pays it.

This tax can be laid by the supreme authority much more conveniently than by the particular assemblies and would in no case be subject to their repeals or modifications, and of course the public credit would never be dependent on or liable to bankruptcy by the humors of any particular assembly. In an essay on finance which I design soon to offer to the public this subject will be treated more fully. (See my Sixth Essay on Free Trade and Finance, p. 229.)

The delegates which are to form that august body, which are to hold and exercise the supreme authority, ought to be appointed by the States in any manner they please; in which they should not be limited by any restrictions; their own dignity and the weight they will hold in the great public councils will always depend on the abilities of the persons they appoint to represent them there, and if they are wise enough to choose men of sufficient abilities and respectable characters, men of sound sense, extensive knowledge, gravity, and integrity, they will reap the honor and advantage of such wisdom.

But if they are fools enough to appoint men of trifling or vile characters, of mean abilities, faulty morals, or despicable ignorance, they must reap the fruits of such folly and content themselves to have no weight, dignity, or esteem in the public councils; and, what is more to be lamented by the Commonwealth, to do no good there.

I have no objection to the States electing and recalling their delegates as often as they please, but think it hard and very injurious both to them and the Commonwealth that they should be obliged to discontinue them after three years' service, if they find them on that trial to be men of sufficient integrity and abilities; a man of that experience is certainly much more qualified to serve in the place than a new member of equal good character can be. Experience makes perfect in every kind of business. Old, experienced statesmen of tried and approved integrity and abilities are a great blessing to a state; they acquire great authority and esteem as well as wisdom, and very much contribute to keep the system of government in good and salutary order; and this furnishes the strongest reason why they should be continued in the service, on Plato's great maxim, that "the man best qualified to serve ought to be appointed."

I am sorry to see a contrary maxim adopted in our American councils; to make the highest reason that can be given for continuing a man in the public administration, assigned as a constitutional and absolute reason for turning him out, seems to me to be a solecism of a piece with many other reforms, by which we set out to surprise the world with our wisdom.

If we should adopt this maxim in the common affairs of life, it would be found inconvenient, e. g., if we should make it a part of our Constitution that a man who has served a three years' apprenticeship to the trade of a tailor or shoemaker should be obliged to discontinue that business for the three successive years, I am of opinion the country would soon be cleared of good shoemakers and tailors. Men are no more born statesmen than shoemakers or tailors. Experience is equally necessary to perfection in both.

It seems to me that a man's inducement to qualify himself for a public employment and make himself master of it must be much discouraged by this consideration, that, let him take whatever pains to qualify himself in the best manner, he must be shortly turned out, and of course it would be of more consequence to him to turn his attention to some other business, which he might adopt when his present appointment should expire, and by this means the Commonwealth is in danger of losing the zeal, industry, and shining abilities, as well as services, of their most accomplished and valuable men.

I hear that the State of Georgia has improved on this blessed principle and limited the continuance of their governors to one year; the consequence is they have already the ghosts of departed governors stalking about in every part of their State and growing more plenty every year; and as the price of everything is reduced by its plenty, I can suppose governors will soon be very low there.

This doctrine of rotation was first proposed by some sprightly genuses of brilliant politics with this cogent reason: That by introducing a rotation in the public offices we should have a great number of men trained up to public service; but it appears to me that it will be more likely to produce many jacks at all trades, but good at none.

I think that frequent elections are a sufficient security against the continuance of men in public office whose conduct is not approved, and there can be no reason for excluding those whose conduct is approved and who are allowed to be better qualified than any men who can be found to supply their places.

Another great object of government is the apportionment of burdens and benefits, for if a greater quota of burden or a less quota of benefits than is just and right be allotted to any State, this ill apportionment will be an everlasting source of uneasiness and discontent. In the first case, the overburdened State will complain; in the last case, all the States whose quota of benefit is underrated will be uneasy; and this is a case of such delicacy that it can not be safely trusted to the arbitrary opinion or judgment of any body of men, however august.

Some natural principles of confessed equity, and which can be reduced to a certainty, ought, if possible, to be found and adopted, for it is of the highest moment to the Commonwealth to obviate, and, if possible, wholly to take away, such a fruitful and common source of infinite disputes as that of apportionment of quotas has ever proved in all States of the earth.

The value of lands may be a good rule, but the ascertainment of that value is impracticable; no assessment can be made which will not be liable to exception and debate—to adopt a good rule in anything which is impracticable is absurd, for it is physically impossible that anything should be good for practice which can not be practiced at all; but if the value of lands was capable of certain assessment, yet to adopt that value as a rule of apportionment of quotas, and at the same time to except from valuation large tracts of sundry States of immense value which have all been defended by the joint arms of the whole Empire, and for the defense of which no additional quota of supply is to be demanded of those States to whom such lands are secured by such joint efforts of the States, is in its nature unreasonable and will open a door for great complaint.

It is plain without argument that such States ought either to make grants to the Commonwealth of such tracts of defended territory or sell as much of them as will pay their proper quota of defense and pay such sums into the Public Treasury; and this ought to be done, let

what rule of quota forever be adopted with respect to the cultivated part of the United States, for no proposition of natural right and justice can be plainer than this, that every part of valuable property which is defended ought to contribute its quota of supply for that defense.

If, then, the value of cultivated lands is found to be an impracticable rule of apportionment of quotas, we have to seek for some other, equally just and less exceptionable.

It appears to me that the number of living souls or human persons of whatever age, sex, or condition, will afford us a rule or measure of apportionment which will forever increase and decrease with the real wealth of the States, and will, of course, be a perpetual rule, not capable of corruption by any circumstances of future time; which is of vast consideration in forming a constitution which is designed for perpetual duration, and which will in its nature be as just as to the inhabited parts of each State as that of the value of lands or any other that has or can be mentioned.

Land takes its value not merely from the goodness of its soil, but from innumerable other relative advantages, among which the population of the country may be considered as principal, as lands in a full-settled country will always (*ceteris paribus*) bring more than lands in thin settlements. On this principle when the inhabitants of Russia, Poland, etc., sell real estates they do not value them as we do, by the number of acres, but by the number of people who live on them.

Where any piece of land has many advantages many people will crowd there to obtain them, which will create many competitors for the purchase of it, which will, of course, raise the price. Where there are fewer advantages there will be fewer competitors and, of course, a less price; and these two things will forever be proportionate to each other, and, of course, the one will always be a sure index of the other.

The only considerable objection I have ever heard to this is that the quality of inhabitants differs in the different States, and it is not reasonable that the black slaves in the Southern States should be estimated on a par with the white freemen in the Northern States. To discuss this question fairly I think it will be just to estimate the neat value of the labor of both, and if it shall appear that the labor of the black person produces as much neat wealth to the Southern State as the labor of the white person does to the Northern State, I think it will follow plainly that they are equally useful inhabitants in point of wealth, and, therefore, in the case before us should be estimated alike.

And if the amazing profits which the Southern planters boast of receiving from the labor of their slaves on their plantations are real, the Southern people have greatly the advantage in this kind of estimation; and as this objection comes principally from the Southward, I should suppose that the gentlemen from that part would blush to urge it any further.

That the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States, I take it, will be universally admitted, but I humbly apprehend that an appeal from the first instance of trial ought to be admitted in cases of great moment, on the same reasons that such appeals are admitted in all the states of Europe. It is well known to all men versed in courts that the first hearing of a cause rather gives an opening to that evidence and reason which ought to decide it than such a full examination and thorough discussion as should always precede a final judgment in cases of national consequence. A detail of reasons might be added, which I deem it unnecessary to enlarge on here.

The supreme authority ought to have a power of peace and war, and forming treaties and alliances with all foreign powers, which implies a necessity of their also having sufficient powers to enforce the obedience of all subjects of the United States to such treaties and alliances, with full powers to unite the force of the States and direct its operations in war and to punish all transgressors in all these respects; otherwise, by the imprudence of a few, the whole Commonwealth may be embroiled with foreign powers and the operations of war may be rendered useless or fall much of their due effect.

All these I conceive will be easily granted, especially the latter, as the power of Congress to appoint and direct the Army and Navy in war, with all departments thereto belonging, and punishing delinquents in them all, is already admitted into practice in the course of the present unhappy war, in which we have been long engaged.

It, but now the great and most difficult part of this weighty subject remains to be considered, viz, how these supreme powers are to be constituted in such manner that they may be able to exercise with full force and effect the vast authorities committed to them for the good and well-being of the United States, and yet be so checked and restrained from exercising them to the injury and ruin of the States that we may with safety trust them with a commission of such vast magnitude—and may Almighty wisdom direct my pen in this arduous discussion.

1. The men who compose this important council must be delegated from all the States; and of course the hope of approbation and continuance of honors will naturally stimulate them to act right and to please; the dread of censure and disgrace will naturally operate as a check to restrain them from improper behavior; but however natural and forcible these motives may be, we find by sad experience they are not always strong enough to produce the effects we expect and wish from them.

It is to be wished that none might be appointed that were not fit and adequate to this weighty business; but a little knowledge of human nature, and a little acquaintance with the political history of mankind, will soon teach us that this is not to be expected.

The representatives appointed by popular elections are commonly not only the legal, but real, substantial representatives of their electors; i. e., there will commonly be about the same proportion of grave, sound, well-qualified men, trifling, desultory men—wild or knavish schemers—and dull, ignorant fools in the delegated assembly as in the body of electors.

I know of no way to help this; such delegates must be admitted as the States are pleased to send; and all that can be done is, when they get together, to make the best of them.

We will suppose then they are all met in Congress, clothed with that vast authority which is necessary to the well-being and even existence of the Union that they should be vested with; how shall we empower them to do all necessary and effectual good and restrain them from doing hurt? To do this properly, I think we must recur to those natural motives of action, those feelings and apprehensions, which usually occur to the mind at the very time of action; for distant consequences, however weighty, are often too much disregarded.

Truth loves light and is vindicated by it. Wrong shrouds itself in darkness, and is supported by delusion. An honest, well-qualified man loves light, can bear close examination and critical inquiry, and is best pleased when he is most thoroughly understood; a man of corrupt design, or a fool of no design, hates close examination and critical in-



quity; the knavery of the one, and the ignorance of the other, are discovered by it, and they both usually grow uneasy before the investigation is half done. I do not believe that there is a more natural truth in the world, than that divine one of our Saviour, "He that doth truth, cometh to the light." I would therefore recommend that mode of deliberation, which will naturally bring on the most thorough and critical discussion of the subject, previous to passing any act; and for that purpose humbly propose:

2. That the Congress shall consist of two chambers, an upper and a lower house, or senate and commons, with the concurrence of both necessary to every act; and that every State send one or more delegates to each house; this will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject, and of equal authority in the decision.

These two houses will be governed by the same natural motives and interests, viz, the good of the Commonwealth and the approbation of the people, whilst at the same time the emulation naturally arising between them will induce a very critical and sharp-sighted inspection into the motions of each other. Their different opinions will bring on conferences between the two houses, in which the whole subject will be exhausted in arguments pro and con, and shame will be the portion of obstinate convicted error.

Under these circumstances a man of ignorance or evil design will be afraid to impose on the credulity, inattention, or confidence of his house by introducing any corrupt or undigested proposition, which he knows he must be called on to defend against the severe scrutiny and poignant objections of the other house. I do not believe the many hurtful and foolish legislative acts which first or last have injured all the states on earth have originated so much in corruption as indolence, ignorance, and a want of a full comprehension of the subject, which a full, prying, and emulous discussion would tend in a great measure to remove; this naturally rouses the ambitious to excel in policy and argument, and excites the whole to support the dignity of their house and vindicate their own propositions.

I am not of opinion that bodies of elective men, which usually compose parliaments, diets, assemblies, congresses, etc., are commonly dishonest; but I believe it rarely happens that there are not designing men among them; and I think it would be much more difficult for them to unite their partisans in two houses, and corrupt or deceive them both, than to carry on their designs where there is but one unalarmed, unapprehensive house to be managed; and as there is no hope of making these bad men good, the best policy is to embarrass them and make their work as difficult as possible.

In these assemblies are frequently to be found sanguine men, upright enough, indeed, but of strong, wild projection, whose brains are always teeming with Utopian, chimerical plans and political whims very destructive to society. I hardly know a greater evil than to have the supreme council of a nation played off on such men's wiles; such baseless visions at best end in darkness; and the dance, though easy and merry enough at first, rarely fails to plunge the credulous, simple followers into sloughs and bogs at last.

Nothing can tend more effectually to obviate these evils and to mortify and cure such maggoty brains than to see the absurdity of their projects exposed by the several arguments and keen satire which a full, emulous, and spirited discussion of the subject will naturally produce. We have had enough of these geniuses in the short course of our politics, both in our national and provincial councils, and have felt enough of their evil effects to induce us to wish for any good method to keep ourselves clear of them in the future.

The consultations and decisions of national councils are so very important that the fate of millions depends on them; therefore no man ought to speak in such assemblies without considering that the fate of millions hangs on his tongue; and, of course, a man can have no right in such august councils to utter undigested sentiments or indulge himself in sudden, unexamined flights of thought. His most tried and improved abilities are due to the States, who have trusted him with their most important interests.

A man must therefore be most inexcusable who is either absent during such debates or sleeps or whispers or catches flies during the argument, and just rouses when the vote is called to give his yea or nay, to the weal or woe of a nation. Therefore it is manifestly proper that every natural motive that can operate on his understanding or his passions, to engage his attention and utmost efforts, should be put in practice, and that his present feelings should be raised by every motive of honor and shame to stimulate him to every practicable degree of diligence and exertion to be, as far as possible, useful in the great discussion.

I appeal to the feelings of every reader, if he would not, were he in either House, be much more strongly and naturally induced to exert his utmost abilities and attention to any question which was to pass through the ordeal of a spirited discussion of another House, than he would do, if the absolute decision depended on his own House, without any further inquiry or challenge on the subject.

As Congress will ever be composed of men delegated by the several States, it may well be supposed that they have the confidence of their several States and understand well the policy and present condition of them. It may also be supposed that they come with strong local attachments and habits of thinking limited to the interests of their particular States. It may therefore be supposed they will need much information in order to their gaining that enlargement of ideas and great comprehension of thought which will be necessary to enable them to think properly on that large scale which takes into view the interests of all the States.

The greatest care and wisdom is therefore requisite to give them the best and surest information and of that kind that may be the most safely relied on to prevent their being deluded or prejudiced by partial representations made by interested men who have particular views.

This information may perhaps be best made by the great ministers of state, who ought to be men of the greatest abilities and integrity; their business is confined to their several departments and their attention engaged strongly and constantly to all the several parts of the same, the whole arrangement, method, and order of which are formed, superintended, and managed in their offices, and all informations relative to their departments center there.

These ministers will, of course, have the best information and most perfect knowledge of the state of the nation, as far as it relates to their several departments, and will, of course, be able to give the best information to Congress in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole.

The financier manages the whole subject of revenues and expenditures; the secretary of state takes knowledge of the general policy

and internal government; the minister of war presides in the whole business of war and defense, and the minister of foreign affairs regards the whole state of the nation, as it stands related to or connected with all foreign powers.

I mention a secretary of state, because all other nations have one, and I suppose we shall need one as much as they, and the multiplicity of affairs which naturally fall into his office will grow so fast that I imagine we shall soon be under the necessity of appointing one.

To these I would add judges of law and chancery, but I fear they will not be very soon appointed—the one supposes the existence of law, the other of equity—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both these we shall probably appoint proper heads to preside in those departments. I would therefore propose—

3. That when any bill shall pass the second reading in the House in which it originates, and before it shall be finally enacted, copies of it shall be sent to each of the said ministers of state, in being at the time, who shall give said House, in writing, the fullest information in their power and their most explicit sentiments of the operation of the said bill on the public interest, as far as relates to their respective departments, which shall be received and read in said House and entered on their minutes before they finally pass the bill, and when they send the bill for concurrence to the other House they shall send therewith the said informations of the said ministers of state, which shall likewise be read in that House before their concurrence is finally passed.

I do not mean to give these great ministers of state a negative on Congress, but I mean to oblige Congress to receive their advice before they pass their bills, and that every act shall be void that is not passed with these forms; and I further propose that either House of Congress may, if they please, admit the said ministers to be present and assist in the debates of the House, but without any right of vote in the decision.

It appears to me that if every act shall pass so many different corps of discussion before it is completed, where each of them stake their characters on the advice or vote they give, there will be all the light thrown on the case which the nature and circumstances of it can admit, and any corrupt man will find it extremely difficult to foist in any erroneous clause whatever, and every ignorant or lazy man will find the strongest inducements to make himself master of the subject, that he may appear with some tolerable degree of character in it; and the whole will find themselves in a manner compelled diligently and sincerely to seek for the real state of the facts and the natural fitness and truth arising from them, i. e., the whole natural principles on which the subjects depend, and which alone can endure every test, to the end that they may have not only the inward satisfaction of acting properly and usefully for the States, but also the credit and character which is or ought ever to be annexed to such a conduct.

This bill will give the great laws of Congress the highest probability, presumption, and means of right, fitness, and truth that any laws whatever can have at their first enactment, and will of course afford the highest reason for the confidence and acquiescence of the States and all their subjects in them; and, being grounded in truth and natural fitness, their operations will be easy, salutary, and satisfactory.

If experience shall discover error in any law—for practice will certainly discover such errors, if there be any—the legislature will always be able to correct them by such repeals, amendments, or new laws as shall be found necessary; but as it is much easier to prevent mischiefs than to remedy them, all possible caution, prudence, and attention should be used to make the laws right at first.

4. There is another body of men among us whose business of life and whose full and extensive intelligence, foreign and domestic, naturally make them more perfectly acquainted with the sources of our wealth, and whose particular interests are more intimately and necessarily connected with the general prosperity of the country than any other order of men in the States. I mean the merchants, and I could wish that Congress might have the benefit of that extensive and important information which this body of men are very capable of laying before them.

Trade is of such essential importance to our interests and so intimately connected with all our staples, great and small, that no sources of our wealth can flourish and operate to the general benefit of the community without it. Our husbandry, that great staple of our country, can never exceed our home consumption without this—it is plain at first sight that the farmer will not till and sweat through the year to raise great plenty of the produce of the soil if there is no market for his produce when he has it ready for sale, i. e., if there are no merchants to buy it.

In like manner, the manufacturer will not lay out his business on any large scale if there is no merchant to buy his fabrics when he has finished them; a vent is of the most essential importance to every manufacturing country; the merchants therefore become the natural negotiators of the wealth of the country, who take off the abundance and supply the wants of the inhabitants, and as this negotiation is the business of their lives and the source of their own wealth, they, of course, become better acquainted with both our abundance and wants and are more interested in finding and improving the best vent for the one and supply of the other than any other men among us, and they have a natural interest in making both the purchase and supply as convenient to their customers as possible, that they may secure their custom and thereby increase their own business.

It follows, then, that the merchants are not only qualified to give the fullest and most important information to our supreme legislature concerning the state of our trade—the abundance and wants—the wealth and poverty of our people—that is, their most important interests—but are also the most likely to do it fairly and truly, and to forward with their influence every measure which will operate to the convenience and benefit of our commerce, and oppose with their whole weight and superior knowledge of the subject any wild schemes which an ignorant or arbitrary legislature may attempt to introduce to the hurt and embarrassment of our intercourse, both with one another and with foreigners.

The States of Venice and Holland have ever been governed by merchants, or at least their policy has ever been under the great influence of that sort of men. No States have been better served, as appears by their great success, the ease and happiness of their citizens, as well as the strength and riches of their Commonwealths: the one is the oldest and the other the richest State in the world of equal number of people; the one has maintained sundry wars with the grand Turk, the other has withstood the power of Spain and France; and the capitals of both have long been the principal marts of the several parts of Europe in which they are situated; and the banks of both are the best supported and in the best credit of any banks in Europe, though their countries or territories are very small and their inhabitants but a handful when compared with the great States in their neighborhood.

Merchants must, from the nature of their business, certainly understand the interests and resources of their country the best of any men



in it; and I know not of any one reason why they should be deemed less upright or patriotic than any other rank of citizens whatever.

I therefore humbly propose, if the merchants in the several States are disposed to send delegates from their body to meet and attend the sitting of Congress, that they shall be permitted to form a chamber of commerce and their advice to Congress be demanded and admitted concerning all bills before Congress, as far as the same may affect the trade of the States.

I have no idea that the continent is made for Congress. I take them to be no more than the upper servants of the great political body, who are to find out things by study and inquiry, as other people do; and therefore I think it necessary to place them under the best possible advantages, for information, and to require them to improve all those advantages, to qualify themselves in the best manner possible, for the wise and useful discharge of the vast trust and mighty authority reposed in them; and as I conceive the advice of the merchants to be one of the greatest sources of mercantile information which is anywhere placed within their reach, it ought by no means to be neglected, but so husbanded and improved that the greatest possible advantage may be derived from it.

Besides this, I have another reason why the merchants ought to be consulted. I take it to be very plain that the husbandry and manufactures of the country must be ruined if the present rate of taxes is continued on them much longer, and of course a very great part of our revenue must arise from imposts on merchandise, which will fall directly within the merchant's sphere of business, and of course their concurrence and advice will be of the utmost consequence, not only to direct the properest mode of levying those duties, but also to get them carried into quiet and peaceable execution.

No men are more conversant with the citizens, or more intimately connected with their interests, than the merchants, and therefore their weight and influence will have a mighty effect on the minds of the people. I do not recollect an instance in which the court of London ever rejected the remonstrances and advices of the merchants and did not suffer severely for their pride. We have some striking instances of this in the disregarded advices and remonstrances of very many English merchants against the American war, and their fears and apprehensions we see verified, almost like prophecies, by the event.

I know not why I should continue this argument any longer or indeed why I should have urged it so long, inasmuch as I can not conceive that Congress or anybody else will deem it below the dignity of the supreme power to consult so important an order of men, in matters of the first consequence, which fall immediately under their notice, and in which their experience, and of course their knowledge and advice, are preferable to those of any other order of men.

Besides the benefits which Congress may receive from this institution—a chamber of commerce, composed of members from all trading towns in the States—if properly instituted and conducted, will produce very many. I might almost say, innumerable advantages of singular utility to all the States. It will give dignity, uniformity, and safety to our trade; establish the credit of the bank; secure the confidence of foreign merchants; prove in very many instances a fruitful source of improvement of our staples and mutual intercourse; correct many abuses; pacify discontents; unite us in our interests, and thereby cement the general union of the whole Commonwealth; will relieve Congress from the pain and trouble of deciding many intricate questions of trade which they do not understand, by referring them over to this chamber, where they will be discussed by an order of men, the most competent to the business of any that can be found, and most likely to give a decision that shall be just, useful, and satisfactory.

It may be objected to all this, that the less complex and the more simple every constitution is the nearer it comes to perfection. This argument would be very good and afford a very forcible conclusion if the government of men was like that of the Almighty, always founded on wisdom, knowledge, and truth; but in the present imperfect state of human nature, where the best of men know but in part, and must recur to advice and information for the rest, it certainly becomes necessary to form a constitution on such principles as will secure that information and advice in the best and surest manner possible.

It may be further objected that the forms herein proposed will embarrass the business of Congress and make it at best slow and dilatory. As far as this form will prevent the hurrying a bill through the House without due examination, the objection itself becomes an advantage. At most these checks on the supreme authority can have no further effect than to delay or destroy a good bill, but can not pass a bad one; and I think it much better in the main to lose a good bill than to suffer a bad one to pass into a law. Besides it is not to be supposed that clear, plain cases will meet with embarrassment, and it is most safe that untried, doubtful, difficult matters should pass through the gravest and fullest discussion before the sanction of the law is given to them.

But what is to be done if the two Houses grow jealous and ill-natured, and after all their information and advice grow out of humor and insincere and no concurrence can be obtained? I answer, sit still and do nothing until they get into a better humor. I think this is much better than to pass laws in such a temper and spirit as the objection supposes.

It is, however, an ill compliment to so many grave personages to suppose them capable of throwing aside their reason and giving themselves up like children to the control of their passions; or, if this should happen for a moment, that it should continue any length of time, is hardly to be presumed of a body of men placed in such high stations of dignity and importance, with the eyes of all the world upon them; but if they should, after all, be capable of this, I think it madness to set them to making laws, during such fits. It is best, when they are in no condition to do good to keep them from doing hurt, and if they do not grow wiser in reasonable time, I know of nothing better than to be ashamed of our old appointments and make new ones.

But what if the country is invaded, or some other exigency happens, so pressing that the safety of the State requires an immediate resolution? I answer, what would you do if such a case should happen, where there was but one house, unchecked, but equally divided, so that a legal vote could not be obtained? The matter is certainly equally difficult and embarrassed in both cases, but in the case proposed I know of no better way than that which the Romans adopted on the like occasion, viz, that both Houses meet in one Chamber and choose a dictator, who should have and exercise the whole power of both Houses till such time as they should be able to concur in displacing him, and that the whole power of the two Houses should be suspended in the meantime.

5. I further propose that no grant of money whatever shall be made, without an appropriation, and that rigid penalties—no matter how great, in my opinion, the halter would be mild enough—shall be

inflicted on any person, however august his station, who should give order, or vote for the payment, or actually pay one shilling of such money to any other purpose than that of its appropriation, and that no order whatever of any superior in office shall justify such payment, but every order shall express what funds it is drawn upon, and what appropriation it is to be charged to or the order shall not be paid.

This kind of embezzlement is of so fatal a nature that no measures or bounds are to be observed in curing it; when ministers will set forth the most specious and necessary occasions for money and induce the people to pay it in full tale; and when they have gotten possession of it, to neglect the great objects for which it was given, and pay it, sometimes squander it away, for different purposes, oftentimes for useless, yea, hurtful ones, yea, often even to bribe and corrupt the very officers of government, to betray their trust, and contaminate the State, even in its public offices—to force people to buy their own destruction, and pay for it with their hard labor, the very sweat of their brow, is a crime of so high a nature that I know not any gibbet too cruel for such offenders.

6. I would further propose that the aforesaid great ministers of state shall compose a council of state, to whose number Congress may add three others, viz, one from New England, one from the Middle States, and one from the Southern States, one of which to be appointed president by Congress; to all of whom shall be committed the supreme executive authority of the States (all and singular of them ever accountable to Congress), who shall superintend all the executive departments, and appoint all executive officers, who shall ever be accountable to and removable for just cause by them or Congress, i. e., either of them.

7. I propose further that the powers of Congress, and all the other departments acting under them, shall all be restricted to such matters only of general necessity and utility to all the States as can not come within the jurisdiction of any particular State, or to which the authority of any particular State is not competent; so that each particular State shall enjoy all sovereignty and supreme authority, to all intents and purposes, excepting only those high authorities and power by them delegated to Congress for the purposes of the general union.

There remains one very important article still to be discussed, viz, what methods the Constitution shall point out to enforce the acts and requisitions of Congress through the several States; and how the States which refuse or delay obedience to such acts and requisitions shall be treated. This, I know, is a particular of the greatest delicacy, as well as of the utmost importance; and therefore, I think, ought to be decidedly settled by the Constitution, in our coolest hours, whilst no passions or prejudices exist, which may be excited by the great interests or strong circumstances of any particular case which may happen.

I know that supreme authorities are liable to err as well as subordinate ones. I know that courts may be in the wrong as well as the people; such is the imperfect state of human nature in all ranks and degrees of men; but we must take human nature as it is; it can not be mended; and we are compelled both by wisdom and necessity to adopt such methods as promise the greatest attainable good, though perhaps not the greatest possible, and such as are liable to the fewest inconveniences, though not altogether free of them.

This is a question of such magnitude that I think it necessary to premise the great natural principles on which its decision ought to depend. In the present state of human nature all human life is a life of chances; it is impossible to make any interest so certain but there will be a chance against it; and we are in all cases obliged to adopt a chance against us in order to bring ourselves within the benefit of a greater chance in our favor; and that calculation of chances which is grounded on the great natural principles of truth and fitness is of all others the most likely to come out right.

1. No laws of any State whatever which do not carry in them a force which extends to their effectual and final execution can afford a certain or sufficient security to the subject; this is too plain to need any proof.

2. Laws or ordinances of any kind (especially of august bodies of high dignity and consequence) which fall of execution are much worse than none; they weaken the government, expose it to contempt, destroy the confidence of all men, natives and foreigners, in it, and expose both aggregate bodies and individuals, who have placed confidence in it, to many ruinous disappointments which they would have escaped had no law or ordinance been made; therefore,

3. To appoint a Congress with powers to do all acts necessary for the support and uses of the Union, and at the same time to leave all the States at liberty to obey them or not with impunity, is, in every view, the grossest absurdity, worse than a state of nature without any supreme authority at all, and at best a ridiculous effort of childish nonsense; and of course,

4. Every State in the Union is under the highest obligation to obey the supreme authority of the whole, and in the highest degree amenable to it, and subject to the highest censure for disobedience—yet, all this notwithstanding, I think the soul that sins shall die, i. e., the censure of the great supreme power ought to be so directed, if possible, as to light on those persons who have betrayed their country and exposed it to dissolution, by opposing and rejecting that supreme authority, which is the band of our Union and from whence proceeds the principal strength and energy of our Government.

I therefore propose that every person whatever, whether in public or private character, who shall, by public vote or overt act, disobey the supreme authority shall be amenable to Congress, shall be summoned and compelled to appear before Congress, and, on due conviction, suffer such fine, imprisonment, or other punishment as the supreme authority shall judge requisite.

It may be objected here that this will make a member of assembly accountable to Congress for his vote in assembly; I answer, it does so in this only case, viz, when that vote is to disobey the supreme authority; no member of assembly can have right to give such a vote, and therefore ought to be punished for so doing. When the supreme authority is disobeyed, the Government must lose its energy and effect, and of course the empire must be shaken to its very foundation.

A government which is but half executed, or whose operations may all be stopped by a single vote, is the most dangerous of all institutions. See the present Poland and ancient Greece buried in ruins in consequence of this fatal error in their policy. A government which has not energy and effect can never afford protection or security to its subjects, i. e., must ever be ineffectual to its own ends.

I can not, therefore, admit that the great ends of our Union should lie at the mercy of a single State, or that the energy of our Government should be checked by a single disobedience, or that such disobedience should ever be sheltered from censure and punishment; the consequences are too capital, too fatal, to be admitted. Even though I know very well that a supreme authority, with all its dignity and im-



portance, is subject to passions like other lesser powers, that they may be and often are heated, violent, oppressive, and very tyrannical; yet I know also that perfection is not to be hoped for in this life, and we must take all institutions with their natural defects or reject them altogether; I will guard against these abuses of power as far as possible, but I can not give up all government, or destroy its necessary energy, for fear of these abuses.

But to fence them out as far as possible, and to give the States as great a check upon the supreme authority as can consist with its necessary energy and effect, I propose that any State may petition Congress to repeal any law or decision which they have made; and if more than half the States do this, the law or decision shall be repealed, let its nature or importance be however great, excepting only such acts as create funds for the public credit, which shall never be repealed till their end is effected, or other funds equally effectual are substituted in their place; but Congress shall not be obliged to repeal any of these acts so petitioned against till they have time to lay the reasons of such acts before such petitioning States and to receive their answer; because such petitions may arise from sudden heats, popular prejudices, or the publication of matters false in fact, and may require time and means of cool reflection and the fullest information before the final decision is made; but if after all more than half of the States persist in their demand of a repeal, it shall take place.

The reason is the uneasiness of a majority of States affords a strong presumption that the act is wrong, for uneasiness arises much more frequently from wrong than right; but if the act was good and right, it would still be better to repeal and lose it than to force the execution of it against the opinion of a major part of the States; and, lastly, if every act of Congress is subject to this repeal, Congress itself will have stronger inducement not only to examine well the several acts under their consideration, but also to communicate the reasons of them to the States, than they would have if their simple vote gave the final stamp of irrevocable authority to their acts.

Further, I propose that if the execution of any act or order of the supreme authority shall be opposed by force in any of the States (which God forbid), it shall be lawful for Congress to send into such State a sufficient force to suppress it.

On the whole, I take it that the very existence and use of our Union essentially depends on the full energy and final effect of the laws made to support it; and therefore I sacrifice all other considerations to this energy and effect; and if our Union is not worth this purchase, we must give it up—the nature of the thing does not admit of any other alternative.

I do contend that our Union is worth this purchase; with it every individual rests secure under its protection against foreign or domestic insult and oppression; without it we can have no security against the oppression, insult, and invasion of foreign powers, for no single State is of importance enough to be an object of treaty with them, nor, if it was, could it bear the expense of such treaties or support any character or respect in a disreputable state, but must lose all respectability among the nations abroad.

We have a very extensive trade, which can not be carried on with security and advantage without treaties of commerce and alliance with foreign nations.

We have an extensive western territory, which can not otherwise be defended against the invasion of foreign nations bordering on our frontiers, who will cover it with their own inhabitants and we shall lose it forever, and our extent of empire be thereby restrained, and, what is worse, their numerous posterity will in future time drive ours into the sea, as the Goths and Vandals formerly conquered the Romans in like circumstances, unless we have the force of the union to repel such invasions. We have, without the union, no security against the inroads and wars of one State upon another, by which our wealth and strength, as well as ease and comfort, will be devoured by enemies growing out of our own bowels.

I conclude, then, that our Union is not only of the most essential consequence to the well-being of the States in general, but that of every individual citizen of them, and, of course, ought to be supported and made as useful and safe as possible by a constitution which admits that full energy and final effect of government which alone can secure its great ends and uses.

In a dissertation of this sort, I would not wish to descend to minutiae, yet there are some small matters which have important consequences, and therefore ought to be noticed. It is necessary that Congress should have all usual and necessary powers of self-preservation and order, e. g., to imprison for contempt, insult, or interruption, etc., and to expel their own Members for due causes, among which I would rank that of nonattendance on the House or partial attendance, without such excuse as shall satisfy the House.

Where there is such vast authority and trust devolved on Congress, and the grand and most important interests of the empire rest on their decisions, it appears to me highly unreasonable that we should suffer their august consultations to be suspended or their dignity, authority, and influence lessened by the idleness, neglect, and nonattendance of its Members, for we know the acts of a thin House do not usually carry with them the same degree of weight and respect as those of a full House.

Besides, I think when a man is deputed a Delegate in Congress and has undertaken the business, the whole empire becomes, of course, possessed of a right to his best and constant services, which if any Member refuses or neglects, the empire is injured and ought to resent the injury, at least so far as to expel and send him home, that so his place may be better supplied.

I have one argument in favor of my whole plan, viz. it is so formed that no men of dull intellects, or small knowledge, or of habits too idle for constant attendance or close and steady attention, can do the business with any tolerable degree of respectability, nor can they find either honor, profit, or satisfaction in being there, and, of course, I could wish that the choice of the electors might never fall on such a man, or, if it should, that he might have sense enough (of pain, at least, if not of shame) to decline his acceptance.

For, after all that can be done, I do not think that a good administration depends wholly on a good constitution and good laws, for insufficient or bad men will always make bad work and a bad administration, let the Constitution and laws be ever so good. The management of able, faithful, and upright men alone can cause an administration to brighten and the dignity and wisdom of an empire to rise into respect, make truth the line and measure of public decision, give weight and authority to the government, and security and peace to the subject.

We now hope that we are on the close of a war of mighty effort and great distress against the greatest power on earth, whetted into the

most keen resentment and savage fierceness which can be excited by wounded pride, and which usually rises higher between brother and brother offended than between strangers in contest. Twelve of the thirteen United States have felt the actual and cruel invasions of the enemy, and eleven of our capitals have been under their power, first or last, during the dreadful conflict; but a good Providence, our own virtue and firmness, and the help of our friends have enabled us to rise superior to all the power of our adversaries and make them seek to be at peace with us.

During the extreme pressure of the war, indeed, many errors in our administration have been committed when we could not have experience and time for reflection to make us wise, but these will easily be excused, forgiven, and forgotten if we can now, while at leisure, find virtue, wisdom, and foresight enough to correct them and form such establishments as shall secure the great ends of our Union and give dignity, force, utility, and permanency to our empire.

It is a pity we should lose the honor and blessings which have cost us so dear for want of wisdom and firmness in measures which are essential to our preservation. It is now at our option, either to fall back into our original atoms or form such a union as shall command the respect of the world and give honor and security to our people.

This vast subject lies with mighty weight on my mind and I have bestowed on it my utmost attention, and here offer the public the best thoughts and sentiments I am master of. I have confined myself in this dissertation entirely to the nature, reason, and truth of my subject, without once adverting to the reception it might meet with from men of different prejudices or interests. To find the truth, not to carry a point, has been my object.

I have not the vanity to imagine that my sentiments may be adopted. I shall have all the reward I wish or expect if my dissertation shall throw any light on the great subject, shall excite an emulation of inquiry, and animate some abler genius to form a plan of greater perfection, less objectionable, and more useful.

*Notes appended by Pelatiah Webster to the republication made at Philadelphia in 1791.*

#### NOTE 1.

1. Forming a plan of confederation, or a system of general government of the United States, engrossed the attention of Congress from the Declaration of Independence, July 4, 1776, till the same was completed by Congress, July 9, 1778, and recommended to the several States for ratification, which finally took place March 1, 1781, from which time the said confederation was considered as the grand Constitution of the General Government and the whole administration was conformed to it.

And as it had stood the test of discussion in Congress for two years before they completed and adopted it and in all the States for three years more before it was finally ratified, one would have thought that it must have been a very finished and perfect plan of government.

But on trial of it in practice it was found to be extremely weak, defective, totally inefficient, and altogether inadequate to its great ends and purposes. For,

1. It blended the legislative and executive powers together in one body.

2. This body, viz. Congress, consisted of but one House, without any check upon their resolutions.

3. The powers of Congress in very few instances were definitive and final; in the most important articles of government they could do no more than recommend to the several States, the consent of every one of which was necessary to give legal sanction to any act so recommended.

4. They could assess and levy no taxes.

5. They could institute and execute no punishments, except in the military department.

6. They had no power of deciding or controlling the contentions and disputes of different States with each other.

7. They could not regulate the general trade; or,

8. Even make laws to secure either public treaties with foreign States, or the persons of public ambassadors, or to punish violations or injuries done to either of them.

9. They could institute no general judiciary powers.

10. They could regulate no public roads, canals, or inland navigation, etc.

And what caps all the rest was that (whilst under such an inefficient political constitution the only chance we had of any tolerable administration lay wholly in the prudence and wisdom of the men who happened to take the lead in our public councils) it was fatally provided by the absurd doctrine of rotation that if any Member of Congress by three years' experience and application had qualified himself to manage our public affairs with consistency and fitness that he should be constitutionally and absolutely rendered incapable of serving any longer till by three years' discontinuance he had pretty well lost the cue or train of the public councils and forgot the ideas and plans which made his service useful and important, and in the meantime his place should be supplied by a fresh man who had the whole matter to learn, and when he had learned it was to give place to another fresh man; and so on to the end of the chapter.

The sensible mind of the United States, by long experience of the fatal mischiefs of anarchy, or (which is about the same thing) of this ridiculous, inefficient form of government, began to apprehend that there was something wrong in our policy which ought to be redressed and mended; but nobody undertook to delineate the necessary amendments.

I was then pretty much at leisure, and was fully of opinion (though the sentiment at that time would not very well bear) that it would be ten times easier to form a new constitution than to mend the old one. I therefore sat myself down to sketch out the leading principles of that political constitution which I thought necessary to the preservation and happiness of the United States of America, which are comprised in this dissertation.

I hope the reader will please to consider that these are the original thoughts of a private individual, dictated by the nature of the subject only, long before the important theme became the great object of discussion in the most dignified and important assembly which ever sat or decided in America.

#### NOTE 2.

At the time when this dissertation was written (Feb. 16, 1783) the defects and insufficiency of the old Federal Constitution were universally felt and acknowledged; it was manifest not only that the internal police, justice, security, and peace of the States could never be preserved under it, but the finances and public credit would necessarily become so embarrassed, precarious, and void of support that

no public movement which depended on the revenue could be managed with any effectual certainty; but though the public mind was under full conviction of all these mischiefs and was contemplating a remedy, yet the public ideas were not at all concentrated, much less arranged into any new system or form of government which would obviate these evils. Under these circumstances I offered this dissertation to the public. How far the principles of it were adopted or rejected in the new Constitution which was four years afterwards (Sept. 17, 1787) formed by the general convention, and since ratified by all the States, is obvious to everyone.

I wish here to remark the great particulars of my plan which were rejected by the convention.

1. My plan was to keep the legislative and executive departments entirely distinct; the one to consist of the two Houses of Congress, the other to rest entirely in the grand council of state.

2. I proposed to introduce a chamber of commerce, to consist of merchants, who should be consulted by the legislature in all matters of trade and revenue, and which should have the conducting the revenue committed to them.

The first of these the convention qualified; the second they say nothing of—I. e., take no notice of it.

3. I proposed that the great officers of state should have the perusal of all bills before they were enacted into laws, and should be required to give their opinion of them, as far as they affected the public interest in their several departments; which report of them Congress should cause to be read in their respective Houses, and entered on their minutes. This is passed over without notice.

4. I proposed that all public officers appointed by the executive authority should be amenable both to them and to the legislative power, and removable for just cause by either of them. This is qualified by the convention.

And inasmuch as my sentiments in these respects were either qualified or totally neglected by the convention, I suppose they were wrong; however, the whole matter is submitted to the politicians of the present age and to our posterity in future.

In sundry other things the convention have gone into minutiae—e. g., respecting elections of President, Senators, and Representatives in Congress, etc., which I proposed to leave at large to the wisdom and discretion of Congress and of the several States.

Great reasons may doubtless be assigned for their decision, and perhaps some little ones for mine. Time, the great arbiter of all human plans, may after a while give his decision; but neither the convention nor myself will probably live to feel either the exultation or mortification of his approbation or disapprobation of either of our plans.

But if any of these questions should in future time become objects of discussion, neither the vast dignity of the convention nor the low, unnoticed state of myself will be at all considered in the debates; the merits of the matter and the interests connected with or arising out of it will alone dictate the decision.

Humbly presented by

HANNIS TAYLOR.

#### REPORTS OF COMMITTEES.

Mr. BOURNE, from the Committee on Fisheries, to whom was referred the bill (S. 6783) to establish a fish-cultural station in the State of Nevada, reported it without amendment, and submitted a report (No. 599) thereon.

Mr. CLARK of Wyoming, from the Committee on the Judiciary, to whom was referred the amendment submitted by himself on the 1st instant relative to fees of jurors and witnesses in the United States courts, including commissioners' courts, in the States of Wyoming, Montana, Washington, etc., intended to be proposed to the sundry civil appropriation bill, reported favorably thereon and moved that it be printed and referred to the Committee on Appropriations, which was agreed to.

#### PUBLIC BUILDING AT NEW HAVEN, CONN.

Mr. HEYBURN. I am instructed by the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 6616) to authorize the extension, enlargement, and alteration of the public building in the city of New Haven, Conn., to report it favorably without amendment, and I submit a report (No. 600) thereon.

Mr. BRANDEGEE. This is a very short bill, and I ask for its present consideration.

The Secretary read the bill, and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It directs the Secretary of the Treasury to cause the public building in the city of New Haven, Conn., now used for a post-office, and for other purposes, to be enlarged, extended, or remodeled at a cost to the United States of not to exceed \$50,000, including all necessary changes in, additions thereto, alterations thereof, and repairs to the present building, and of the heating and plumbing systems therein, and drainage and approaches thereto, which may be incident to such extension and enlargement or remodeling of the building.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

#### BILLS INTRODUCED.

Mr. BURROWS introduced a bill (S. 6942) to make Muskegon, in the State of Michigan, a subport of entry, and for other purposes, which was read twice by its title and referred to the Committee on Commerce.

Mr. TELLER introduced a bill (S. 6943) authorizing the Secretary of War to bestow a medal of honor upon Gen. Archie C. Fisk, United States Volunteers, which was read twice by its title and referred to the Committee on Military Affairs.

Mr. STEPHENSON introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 6944) granting an increase of pension to Stephen S. Joyce; and

A bill (S. 6945) granting an increase of pension to Robert B. Longstaff.

He also introduced a bill (S. 6946) providing for the adjustment of the claims of the Wisconsin band of Pottawatomie Indians for annuities and other moneys under treaty stipulations, and for other purposes, which was read twice by its title and referred to the Committee on Indian Affairs.

He also introduced a bill (S. 6947) to provide for the purchase of a site and the erection of a public building thereon at Milwaukee, Wis., which was read twice by its title and referred to the Committee on Public Buildings and Grounds.

Mr. PAYNTER introduced a bill (S. 6948) for the relief of the estate of Richard Pemberton, deceased, which was read twice by its title and referred to the Committee on Claims.

Mr. BACON introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 6949) for the relief of the estate of Alfred Austell, deceased; and

A bill (S. 6950) for the relief of the estate of Edward W. Munday, deceased.

Mr. CURTIS introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 6951) to increase the pension of widows of soldiers and sailors of the late civil war, and to grant pensions to widows of such soldiers and sailors;

A bill (S. 6952) granting a pension to Catharine Madden; and

A bill (S. 6953) granting an increase of pension to Lewis Thomas.

He also introduced a bill (S. 6954) for the relief of Elizabeth Jane Bruce and others, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. CARTER introduced a bill (S. 6955) providing for the purchase of the land on which the Census Office is situated, in Washington, D. C., which was read twice by its title and, with the accompanying paper, which was ordered to be printed, referred to the Committee on the Census.

Mr. MARTIN introduced a bill (S. 6956) granting a pension to Claudia D. Blakeman, which was read twice by its title and referred to the Committee on Pensions.

Mr. DEPEW introduced a bill (S. 6957) to repave Nineteenth street NW. from Pennsylvania avenue to N street, which was read twice by its title and referred to the Committee on the District of Columbia.

Mr. FRYE introduced a bill (S. 6958) to provide for private signals at sea, which was read twice by its title and referred to the Committee on Commerce.

Mr. LODGE introduced a bill (S. 6959) to provide for the purchase of building and grounds, or of a site and the erection of a building thereon, in the city of Paris, France, for the use of the embassy of the United States, which was read twice by its title and referred to the Committee on Foreign Relations.

Mr. FORAKER introduced a bill (S. 6960) authorizing the President to appoint Rudolph Ullmer first lieutenant on the retired list, which was read twice by its title and referred to the Committee on Military Affairs.

He also introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 6961) granting an increase of pension to Israel O. Gaskell;

A bill (S. 6962) granting an increase of pension to Joshua Dewees;

A bill (S. 6963) granting an increase of pension to Mary A. Hartshorn; and

A bill (S. 6964) granting an increase of pension to John P. Lacey.

Mr. NEWLANDS introduced a bill (S. 6965) granting a pension to Nathan F. Barrett, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

#### AMENDMENTS TO SUNDRY CIVIL APPROPRIATION BILL.

Mr. FULTON submitted an amendment authorizing the Secretary of the Interior to advertise for and receive bids for the care and custody of persons legally adjudged insane in the District of Alaska, etc., intended to be proposed by him to the



sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. LODGE submitted an amendment proposing to appropriate \$400,000 for the purchase of building and grounds, or of a site and the erection of a building thereon, in the city of Paris, France, for the use of the United States embassy, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Foreign Relations and ordered to be printed.

He also submitted an amendment proposing to appropriate \$250,000 for the purchase of a site and the erection of suitable buildings thereon for an immigrant station at Boston, Mass., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. PERKINS submitted an amendment proposing to appropriate \$2,000 to be paid to the estate of the late Julius Jacobs in satisfaction of the loss of an equal sum taken by parties unknown from the vaults of the subtreasury at San Francisco, Cal., etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to appropriate \$227,950 for the erection of barracks, quarters, and other buildings necessary for the accommodation of Coast Artillery troops for the modern fortifications at Fort Winfield Scott, Cal., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. CULLOM submitted an amendment relative to the enlargement of the reservation at Fort Sheridan, Ill., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. CULBERSON submitted an amendment proposing to appropriate \$345,230 for the erection of barracks, quarters, and other buildings necessary for the accommodation of Coast Artillery troops for the modern fortifications at Fort Crockett, Tex., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

#### AMENDMENTS TO OMNIBUS PUBLIC BUILDINGS BILL.

Mr. LODGE submitted an amendment proposing to appropriate \$400,000 for the purchase of building and grounds, or of a site and the erection of a building thereon, in the city of Paris, France, for the use of the United States embassy, etc., intended to be proposed by him to the omnibus public buildings bill, which was referred to the Committee on Foreign Relations and ordered to be printed.

Mr. STEPHENSON submitted an amendment proposing to appropriate \$5,000 for the construction of a stone facing for the east wall of the Government building at Green Bay, Wis., intended to be proposed by him to the omnibus public buildings bill, which was ordered to be printed and, with the accompanying papers, referred to the Committee on Public Buildings and Grounds.

#### AMENDMENTS TO OMNIBUS CLAIMS BILL.

Mr. HALE submitted an amendment intended to be proposed by him to the House bill 15372, known as the "omnibus claims bill," which was ordered to be printed and, with the accompanying paper, ordered to lie on the table.

Mr. LONG submitted an amendment intended to be proposed by him to the House bill 15372, known as the "omnibus claims bill," which was ordered to lie on the table and be printed.

#### PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA.

On motion of Mr. GALLINGER, it was

Ordered, That 500 additional copies of Senate Document No. 338, Sixtieth Congress, first session, "Report of the schoolhouse commission upon a general plan for the consolidation of public schools in the District of Columbia," be printed for the use of the Commissioners of the District of Columbia.

#### RELIEF OF STORM SUFFERERS.

The VICE-PRESIDENT laid before the Senate the joint resolution (H. J. Res. 173) for the relief of the sufferers from the cyclone which occurred in the States of Georgia, Alabama, Mississippi, and Louisiana on April 24, 1908, which was read the first time by its title.

Mr. MONEY. I ask unanimous consent for the present consideration of the joint resolution. It involves a matter of great urgency.

The VICE-PRESIDENT. The joint resolution will be read at length for the information of the Senate.

The joint resolution was read the second time at length, as follows:

*Resolved, etc.,* That the Secretary of War is hereby authorized to procure, in open market or otherwise, subsistence and quartermaster supplies, medicines, and medical aid, in addition to such supplies belonging to the military establishment and available, and issue same to such destitute persons as have been rendered homeless or are in needy circumstances as the result of the cyclone which occurred April 24, 1908, in the States of Georgia, Alabama, Mississippi, and Louisiana, and in executing this joint resolution is directed to cooperate with the authorities of the said States.

Sec. 2. That to enable the Secretary of War to execute the provisions of this joint resolution and of the joint resolution on the same subject adopted April 27, 1908, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$250,000, to be expended under the direction and in the discretion of the Secretary of War.

The VICE-PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States by Mr. M. C. LATTA, one of his secretaries, announced that the President had, on May 2, approved and signed the following act:

S. 5126. An act to grant to the city of Seattle, in the State of Washington, certain rights of way for sewer and street purposes through and along the military reservation of Fort Lawton, Wash., and through the reservations for the Lake Washington Canal.

#### COMPANIES B, C, AND D, TWENTY-FIFTH INFANTRY.

The VICE-PRESIDENT. The morning business is closed.

Mr. BULKELEY. In accordance with the notice which I gave several days ago I ask to have Senate bill 5729 laid before the Senate.

The VICE-PRESIDENT. The Senator from Connecticut asks for the present consideration of a bill, which will be read by title.

The SECRETARY. A bill (S. 5729) to correct the records and authorize the reenlistment of certain noncommissioned officers and enlisted men belonging to Companies B, C, and D of the Twenty-fifth United States Infantry who were discharged without honor under Special Orders, No. 266, War Department, November 9, 1906, and the restoration to them of all rights of which they have been deprived on account thereof.

The VICE-PRESIDENT. Is there objection? The Chair hears none, and the bill is before the Senate.

Mr. BULKELEY. Mr. President, the duties imposed upon the Committee on Military Affairs under the terms of the resolution instructing that committee to investigate the affray at Brownsville, Tex., on the night of August 13-14, 1906, were of an exceptional character. The conclusions of such investigation involved not only the honor of the Army, but the good character, both as men and soldiers, of all the men of the battalion of the Twenty-fifth Infantry stationed at Fort Brown, Tex. (companies B, C, and D), but collaterally the four regiments of colored troops of the United States Army, of which those companies whose conduct is now in question have become the prominent representatives, and by whose conduct, in a measure, the future status of the colored soldier in the Army of the United States is to be determined.

The committee entered upon this investigation with a determination, if possible, to probe all the circumstances connected with the affray; to elicit all the facts so far as they could be ascertained; to obtain all the evidence, both direct and circumstantial, that would enable the committee to identify the guilty participants, whether soldiers or others possibly guilty, and have performed all these duties with which they were intrusted, and have gathered and reported all the evidence now obtainable. I am of the opinion that a visit by the committee to the scene of the affray and a personal inspection of the military post of Fort Brown, the city of Brownsville, and the surrounding country, an examination on the ground of all conditions there prevailing, both by day as well as by night, would have greatly aided the committee in drawing just and fair conclusions from the mass of evidence submitted for consideration. All the preliminary investigations upon which the order of the President dismissing the troops from the Army appear, from the records, to have been instituted on the theory that the men of the battalion stationed at Fort Brown were guilty participants in the affray. See orders General Garlington (p. 109, S. Doc. 155):

The President directs that you proceed to the places named in the accompanying letter and endeavor to secure information that will lead to the apprehension and punishment of the men of the Twenty-fifth In-

infantry believed to have participated in the riotous disturbance which occurred in Brownsville, Tex., on the night of the 13th of August, 1906. \* \* \* And in this connection the President further authorizes you to make known to those concerned that unless such enlisted men of the Twenty-fifth Infantry as may have knowledge of the facts relating to the shooting, killing, and riotous conduct on the part of the men with the organizations serving at Fort Brown, Tex., on the night of August 13, 1906, report to you such facts and all the circumstances within their knowledge which will assist in apprehending the guilty parties, orders will be issued from the War Department discharging every man in Companies B, C, and D of the Twenty-fifth Infantry without honor, etc.

Mr. BURROWS. To whom was the order issued?

Mr. BULKELEY. To Major Blocksom. The investigation of the citizens' committee appointed the day after the affray in Brownsville from the inquiries instituted indicate the same thought; and I will read a question and answer that were propounded not only to one but to almost every witness who was called before the committee.

Investigation by citizens' committee, page 82, Senate Document No. 155:

Q. We are inquiring into the matter of last night, with a view to ascertaining who the guilty parties are. We know they were negro soldiers.

Page 85:

Q. You know the object of this meeting. We know that this outrage was committed by negro soldiers. We want any information that will lead to a discovery of whoever did it.

Page 110: Orders to Lieutenant-Colonel Lovering, September 24, 1906:

SIR: By direction of the division commander, I inclose you herewith the affidavits of \* \* \* with reference to certain troubles which occurred at Brownsville, Tex., between soldiers of the Twenty-fifth Infantry and civilians.

Hearings, part 2, page 11: Report of Major Blocksom and M. D. Purdy, assistant to the Attorney-General:

1. Testimony with reference to the assembling of the soldiers, the shooting from the barracks behind the garrison wall, the climbing over the garrison wall, and the shooting into the houses on the Garrison road, etc.

Page 162, part 2: Affidavit of Major Blocksom:

\* \* \* I am a major and inspector-general in the United States Army; that on the 22d day of December, 1906, I was duly authorized and directed by the Secretary of War, through the proper official channels, to go to Brownsville and other places in the State of Texas, for the purpose of investigating the shooting affray committed in the city of Brownsville on the night of the 13th of August, 1906, in which it was alleged that certain members of Companies B, C, and D of the Twenty-fifth Infantry were implicated, etc.

I have been particular to recall all the orders issued on which this order of dismissal was founded, including some extracts from the proceedings of the citizens' committee to verify my conclusions—that up to the commencement of the investigation by the Senate Committee on Military Affairs it was practically assumed by the military, executive, and civil authorities that the troops, or some of them, were guilty of the "shooting up of the town," notwithstanding their persistent denial on all occasions of participation in the affray or any knowledge of parties engaged in the murderous raid—such protestations of innocence and lack of knowledge were at once construed as sufficient evidence of an additional crime, "a conspiracy of silence" to shield the guilty ones, of whom, it was assumed, they must necessarily have knowledge. I have never had called to my attention, Mr. President, in view of the testimony submitted to your committee, a more relentless pursuit of men accused of crime without an opportunity to be heard in their own defense, except to protest their innocence, or guilty knowledge which was at once construed as I have before indicated. It seems to me, Mr. President, that up to the time of the investigation by your committee the elementary principle of the criminal law as laid down by the Supreme Court of the United States has been, unwittingly perhaps, violated. I venture, as a layman, to quote:

The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law. (156 U. S., 453.)

And in the same case:

A reasonable doubt, as that term is employed in the administration of the criminal law, is an honest, substantial misgiving, generated by the proof or the want of it. It is such a state of the proof as fails to convince your judgment and conscience and satisfy your reason of the guilt of the accused.

And in 155 United States, page 439, Justice Brewer says:

In a criminal trial the burden of proof is on the Government, and the defendant is entitled to the benefit of a reasonable doubt; and when testimony contradictory or explanatory is introduced by the defendant, it becomes a part of the burden resting upon the Government to make the case so clear that there is no reasonable doubt as to the inferences and presumptions claimed to flow from the evidence.

This prosecution up to this point, Mr. President, might more rightfully be called a "persecution," for up to the hour of their dismissal these troops had never been given the opportunity of

a hearing, either in a civil or a military court, if I except the proceedings before the grand jury of Cameron County, in which they could not participate and which resulted in a failure to find an indictment against the soldiers under arrest and selected by Captain McDonald, of the Texas Rangers, as those most likely to have been participants in the affray. In fact, Mr. President, I am bound to say that in all these preliminary proceedings, and continued down through your committee's investigation, there seemed an earnest desire on the part of every department of the Government connected with the military establishment to establish the justness and integrity of the orders of dismissal, rather than to accord to these men the "presumption of innocence" or the benefit of "a reasonable doubt" of their guilt.

For nearly two years these soldiers of our Army, with otherwise an untarnished record, have borne the odium of accusation and the disgrace of dismissal from the Army without honor uncomplainingly, enduring all these months confinement to post, additional and onerous military duties, both by day and night, in an effort to extort an admission of guilt, satisfied that time would disclose the real perpetrators of the great crime with which they were charged; that their good character as soldiers, and in civil life since their forced retirement from the Army, would win for them that measure of justice to which they feel they are entitled.

At this point, Mr. President, in view of what I have already said and in reply to the earnest appeal and timely suggestion of the Senator from Idaho, in which I heartily concur, that—

It is our duty to say to the people of this country that the party which gave the colored man his freedom will also teach him that this Government can only be preserved by observing the law.

To this warning to the negro I would add that in the administration of the law by executive, judicial, or administrative authority the citizen and the soldier is equally entitled to its observance and protection. It seems to me proper before proceeding to a discussion of the evidence in this case to review for a moment the claimed authority of law on which the dismissal of the soldiers of the Twenty-fifth Infantry is founded:

The fourth article of war, regulating the separation of an enlisted man from the military service, reads as follows:

"ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge, in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial."

The authority for a discharge from the military service is vested in a field officer of a regiment to which the enlisted man belongs or by the commanding officer when no field officer is present, and this power is limited only to the case of an enlisted man discharged before his term of service has expired, when the discharge must be issued by the same officer, upon the approval or order of the President, the Secretary of War, the commanding officer of a department, or the sentence of a general court-martial. It is evident from the wording of this fourth article that it was intended, and the practice and precedents in the Army would lead to the conclusion, that, in the case of individual enlisted men, the high reviewing officers named in article 4—the President, Secretary of War, or the commanding officer—were to decide finally on the propriety of the separation of the soldier from the service prior to the expiration of his enlistment, and on the approval of the officer named the usual official named in article 4 issued the discharge. It conferred no powers, except of final review and approval, upon the President, Secretary of War, or any other official, except that the sentence of the court-martial might terminate the service prior to the expiration of the term of service. For the protection of the soldier paragraph 146 of the Army Regulations provides:

146. The character given on a discharge will be signed by the company or detachment commander, and great care will be taken that no injustice is done the soldier. If the soldier's service has been honest and faithful, he will be entitled to such character as will warrant his reenlistment—that is, to character at least "good." Where the company commander deems the service not honest and faithful, he shall, if practicable, so notify the soldier at least thirty days prior to discharge, and shall at the same time notify the commanding officer, who will in every such case convene a board of officers—three, if practicable—to determine whether the soldier's service has been honest and faithful. The soldier will in every case be given a hearing before the board.

If the company commander is the commanding officer, he will report the facts to the next higher commander, who will convene the board. The finding of the board, when approved by the convening authority, shall be final. Discharge without honor on account of "service not honest and faithful" will be given only on the approved finding of a board of officers, as herein prescribed.

When an honorable discharge is given, following the action of the board, the fact will be noted on the discharge and on the muster rolls.

The proceedings of boards convened under this paragraph, showing all the facts pertinent to the inquiry, will be forwarded by the reviewing authority direct to the military secretary of the Army.



In the case of these soldiers none of the precautions provided by this article of war appear to have been complied with. The provision of paragraph 146 of the Army Regulations—

The soldier will in every case be given a hearing before the board—provided for in the article cited, and without whose approval no discharge without honor could be issued—

Discharge without honor on account of "service not honest and faithful" will be given only on the approved finding of a board of officers, as herein prescribed—

was most certainly disregarded; it is not claimed that any such action was taken or forwarded to The Military Secretary of the Army by the reviewing authority, as required. No court-martial was ever held to try these soldiers for the offense with which they were charged, and which, if committed by them at all, was certainly of the gravest and most serious character and subject to the cognizance of either military or civil authority, as described in the opinion of the Judge-Advocate-General addressed to the Secretary of War under date of November 23, 1906 (S. Doc. 155):

If a soldier commits an offense of so serious a character as to warrant his discharge by way of punishment, charges are preferred and the case is tried by a general court-martial.

These soldiers were never allowed the benefits of either a hearing before the board of review, provided, or a trial before a general court-martial, at which they could appear and be heard, before their enforced dismissal and separation from the Army.

It is true that charges were preferred under the sixty-second article of war against the men of the Twenty-fifth Infantry (twelve in all), selected by Captain McDonald, of the Texas Rangers. I quote the charge and specification in the case of Sergt. George Jackson, of which similar charges and specifications were filed against each of the twelve men:

*Charge and specification preferred against Sergt. George Jackson, Company B, Twenty-fifth Infantry.*

*Charge.*—Conduct to the prejudice of good order and military discipline, in violation of the sixty-second article of war.

*Specification.*—In that Sergt. George Jackson, Company B, Twenty-fifth Infantry, did, without authority, take from the barracks of his or other company stationed at Fort Brown, Tex., one magazine rifle, caliber .30, model 1903, and did, singly or in company with other party or parties unknown, take part in a disturbance in the streets of Brownsville, Tex., in which disturbance one citizen of said town was killed and another wounded, by loading with ball cartridges and firing said rifle in said streets of said town and causing damage to property of inhabitants of said town.

This on or about August 13, 1906.

H. CLAY M. SUPPLEE,  
First Lieutenant, Battalion Adjutant,  
Twenty-sixth Infantry, Officer Preferring Charge.

Witnesses: Sergt. James R. Reid, Company B; private John Hollo-mon, Company B; Sergt. Darby W. O. Browner, Company C; Corpl. Charles H. Madison, Company C; Corpl. Willie H. Miller, Company C; Private Charles W. Askew, Company C; Private James W. Newton, Company C; Private Oscar W. Reid, Company C; Corpl. David Powell, Company D; Private Joseph H. Howard, Company D; Private James C. Gill, Company D.

In confinement since August 25, 1906.

Rate of pay: \$23 per month.

Previous convictions: None.

[First indorsement.]

FORT SAM HOUSTON, TEX., August 28, 1906.

Respectfully forwarded to the military secretary, Department of Texas, recommending trial by general court-martial. Under paragraph 962, Army Regulations, these charges have been investigated by the undersigned, as far as practicable with the means at hand, and I am of the opinion that it is doubtful if the allegations as set forth can be substantiated.

C. J. T. CLARKE,

Major, Twenty-sixth Infantry, Commanding.

And for whom warrants were issued by the civil authority—Judge Welch, one of the district court—but for what purpose? Avowedly and only as the sufficient answer to the demands of the sheriff of Cameron County for the surrender of these men to the civil authorities—that they were held to answer for a military offense, and for the further reason that authorities both at Washington and at Fort Brown did not believe that these men would receive fair treatment from citizens or authorities.

I quote now, for I think it is important as showing the situation there, from official documents, and all my quotations with a single exception during my discussion of this subject will be from the documents presented with the reports of your committee and now on the files of the Senate. I quote from the official record, Senate Document 155, page 46:

[Telegram.]

CAMP MABRY,  
Austin, Tex., August 23, 1906.

MILITARY SECRETARY,

War Department, Washington, D. C.:

Following telegrams received from Brownsville this date:

ADJUTANT-GENERAL, CAMP MABRY,

Austin, Tex.:

Have placed 3 sergeants, 3 corporals, and 6 privates in confinement in guardhouse here on warrants issued by Judge Wells, of charge of

murder, conspiring to murder, etc., to be kept in confinement until required by judge. I do not believe these men will have unbiased trial here. An effort, in my opinion, should be made to have them tried elsewhere. I also fear for their safety if turned over to civil authorities, in case of mob violence, although authorities assure absolute protection. Feeling here still very bitter. Request opinion on my action.

PENESE, Commanding.

BROWNSVILLE, TEX., August 23.

CHIEF OF STAFF, CAMP MABRY,  
Austin, Tex.:

Battalion Twenty-fifth will probably get away to-night. Warrants have been issued for murder, conspiracy to murder, etc., against 3 sergeants, 3 corporals, 6 privates, and 1 ex-soldier. They will be turned over to post commander—Captain Preston, Twenty-sixth Infantry—for safe-keeping, and placed in post guardhouse until required by district judge. Don't know when this will be; probably early part of next month; possibly earlier. Authorities pledge themselves able to keep prisoners from violence. Feeling here high.

BLOCKSOM, Major.

In view of the excited state of feeling among citizens at Brownsville, I recommend that the Department of Justice be asked to take immediate steps for proper defense of these men, and that a change of venue be secured to some locality not affected by local excitement. I do not believe that the lives of these men will be safe if they are turned over to the civil authorities at Brownsville, nor will their witnesses be safe if sent back to that place. In view of present feeling, action looking to the immediate transfer of these men to another place of confinement pending trial is urged.

MCCASKEY,  
Brigadier-General, Commanding.

[Telegram.]

CAMP MABRY,  
Austin, Tex., August 23, 1906.

MILITARY SECRETARY,

War Department, Washington, D. C.:

Following received:

BROWNSVILLE, August 23.

MILITARY SECRETARY, DEPARTMENT OF TEXAS:

One corporal, 2 privates, my company (D), ordered placed arrest and left here in connection shooting of August 13. I believe these men absolutely innocent, and do not believe will receive fair treatment from citizens and authorities. Request these men sent in arrest with company, to be tried before impartial tribunal, or that capable officer detained here care for their interests.

LYON.

MCCASKEY,  
Brigadier-General, Commanding.

As I have before suggested, the reason why these charges were preferred under the sixty-second article of war are set forth in the letter of General Ainsworth, The Military Secretary here at Washington, now the Adjutant-General, under date of August 25. Page 54:

[Telegram.]

THE MILITARY SECRETARY'S OFFICE,  
Washington, August 25, 1906.

COMMANDING GENERAL, DEPARTMENT OF TEXAS.

San Antonio, Tex.:

Confidential. After conference between Acting Attorney-General and Acting Judge-Advocate-General, it has been decided that enlisted men of battalion of Twenty-fifth Infantry en route to Fort Reno must be held without privileges and under strict surveillance as being in military custody either as offenders or witnesses in Brownsville case; also that if attempt is made by State authorities to serve additional process against individual soldiers of said battalion as offenders or witnesses the men must not be surrendered, but return to process must be made in each case to the effect that soldier is in military custody, and that as military jurisdiction has already attached compliance with process must be deferred. If you can reach battalion commander by wire, direct him to take this course should occasion arise, and act accordingly yourself, if necessary.

By order Acting Secretary of War:

AINSWORTH,  
The Military Secretary.

Page 57:

[Inclosure.—Telegram.]

THE MILITARY SECRETARY'S OFFICE,  
Washington, August 27, 1906.

THE COMMANDING GENERAL, DEPARTMENT OF TEXAS,

San Antonio, Tex.:

The action of the State judge in vacating warrants already issued against accused soldiers of Twenty-fifth Infantry now detained at Fort Sam Houston, Tex., as reported in your telegram of August 26, leaves no charges pending against these soldiers. You will therefore cause military charges to be formally preferred against said soldiers under sixty-second article of war, alleging participation, either directly or by way of conspiracy, or both, in Brownsville disturbance. Orders for trial on said charges must not issue until investigation now under way is completed and acted upon here. Should new warrants issue by State authorities for said accused soldiers, or should they make demand upon you for the surrender of said soldiers for trial by State courts, make return thereto in each case that soldiers are now held in military custody for trial for the military offenses involved in their alleged participation in Brownsville disturbance and that compliance with State process must be deferred, and report your action to The Military Secretary.

Instruct commanding officer, Fort Reno, to hold all soldiers of the three companies of Twenty-fifth Infantry at his post as witnesses in military investigation now proceeding of Brownsville disturbance and in

military trials which may result therefrom; also to place in confinement such soldiers of these companies as there is reasonable evidence to believe implicated in said disturbance, either directly or by way of conspiracy, or both, and to prefer formal charges against said soldiers under the sixty-second article of war. Orders for trial on such charges must not issue until investigation now under way is completed and acted upon here. Should attempt be made by State authorities to serve additional warrants or subpoenas at Fort Reno, instruct commanding officer to make return thereto that the soldiers are held by military authorities for trial for military offenses involved in their alleged participation in Brownsville disturbance, or as witnesses in such trials, and that compliance with State process must for the present be deferred.

By order Acting Secretary of War:

AINSWORTH,  
The Military Secretary.

(Copy to the Department of Justice, August 28, 1906.)

Page 51:

[Telegram.]

THE MILITARY SECRETARY'S OFFICE,  
Washington, August 24, 1906.

COMMANDING GENERAL, DEPARTMENT OF TEXAS,  
Camp Mabry, Austin, Tex.:

Confidential. Following telegram just sent to commanding officer, Fort Brown, Tex., where battalion of Twenty-fifth Infantry has been held since morning:

Confidential. All men of Twenty-fifth Infantry who are now in custody of military authorities, including those for whom warrants have been issued by civil authorities, will be sent immediately with battalion to Fort Sam Houston and delivered to military authorities there. They will be held there until they can be turned over safely to civil authorities. Battalion will remain at Fort Sam Houston until sufficient white troops reach there to guard and protect prisoners. Battalion will then proceed immediately to Fort Reno. This movement of accused men should not be announced in advance, and should be made so as to avoid attracting attention or bringing on conflict with civil authorities. There is no intention of taking these men beyond jurisdiction of State of Texas or of withholding them from civil authorities a moment beyond time when they can be turned over safely. It is not believed safe to leave them at Fort Brown, as the one company to be left there is insufficient to do work of shipping property and supplies and at same time guard prisoners so as to prevent their escape or protect them if need be. You can make this explanation if it becomes necessary. The President himself directs the action herein ordered. You are authorized to make all necessary arrangements with railroad companies without referring matter to higher authority, and to arrange for holding train at San Antonio for reembarkation of battalion. Make movement quietly and discreetly. By all means avoid conflict if possible, but see that accused men and battalion are protected from violence during movement. Instructions have been wired to department commander, if possible, to have troops meet your train at San Antonio and relieve you of accused men, so that you can proceed direct to Fort Reno. Communicate with Department commander at Camp Mabry, if possible. Start your movement at earliest possible moment.

By order Acting Secretary of War:

AINSWORTH,  
The Military Secretary.

Pages 95-96:

OFFICE OF UNITED STATES ATTORNEY,  
SOUTHERN DISTRICT OF TEXAS,  
Laredo, Tex., September 6, 1906.

Hon. WM. H. MOODY,  
Attorney-General, Washington, D. C.

SIR: I beg leave to submit the following report covering my investigations in the matter of the negro soldiers at Brownsville, Tex.:

August 28, ultimo, I received a telegram from United States Attorney McLemore requesting me to go at once to Brownsville, Tex., "consult with military and civil authorities and report in detail situation and facts whether in your opinion accused soldiers can now get fair trial at Brownsville and be afforded protection by civil authorities against mob violence; if not whether civil authorities will consent to change of venue." I immediately reported to Attorney-General. I immediately started for Brownsville via Monterey and Matamoros, Mexico, being the quickest route. I was fortunate on my journey to encounter several prominent persons who had been in Brownsville the night of the trouble with the negroes and afterward. In order to arrive at an opinion of the feeling and conditions existing in Brownsville, I began a series of questions with them as well as others I met who could give me information on these points. After arrival in Brownsville I interrogated and consulted the military officer making an inspection for the War Department, Major Blastock [Blocksom], county judge, mayor of Brownsville, chairman of the Citizens' Protection Committee, ex-district judge, collector of customs, inspector of customs, and citizens generally, poor, rich, and indifferent races, endeavoring, as nearly as possible, to feel the pulse of the entire body corporate, and judge of the sentiment existing.

Mr. FORAKER. I ask the Senator if it is not true that in an official report made by Major Blocksom he also expressed the opinion that there could not be a fair trial in Brownsville?

Mr. BULKELEY. I think you will find that in the record. I do not happen to have it among my quotations, but I want to quote a few words from the assistant United States attorney, to whom this question was submitted by the military authorities. Assistant United States Attorney Hamilton continues:

I found the officials, and with very few exceptions all the citizens, most frank and courteous in expressing their views and opinions on the matter, and I had no difficulty in determining that such a prejudice existed against the accused negro soldiers that a fair trial or any trial could not be obtained in Cameron County. In fact, some of the best citizens expressed the wish that the soldiers might not be returned to Brownsville even for a trial, as they feared that, although the citizens had acted with the greatest prudence hitherto and refrained from any violence toward the soldiers, some firebrand might start trouble, and, once commenced, no telling where it might end. I also consulted with the State district judge and district attorney. They agreed that

it would be impossible to try the case in Cameron County, and the judge gave me to understand that the cases, if any indictment were found, would be transferred to some county free from prejudice, possibly Nueces. In going over the evidence with the officials we were impressed with the difficulty of identifying any of the culprits, and there is great likelihood that no indictments can be found. The governor of Texas has offered a reward of \$500 for evidence leading to the conviction of the guilty ones, but it has produced no evidence thus far. My telegram to you from Brownsville covered this matter briefly. As to mob violence, I believe the hot-heads were governed by the prudence of the best counsel to refrain from any overt act, but that this was brought about mainly by the fact that there was a battalion of soldiers that would have to be overcome to reach the accused, I think, can be little doubted.

Were the accused to be taken back to Brownsville for trial, should indictments be found, and such trial result in an acquittal, I fear, unless the accused were well guarded, there might be trouble before they could reach a place of safety. The city of Brownsville, without doubt, has suffered a terrible and unreasonable attack by soldiers, who should have acted just the opposite in affording them protection, and they are righteously indignant. As my instructions did not include a finding of the facts concerning the attack and the crime committed, I presume it is not desired. If, however, details of the attack and facts connected are desired, they can readily be had from the War Department from Inspector-General, as Major Blastock [Blocksom] and I know that he was very careful in gathering an unbiased mass of information and facts.

The chances are that unless the soldiers clean up their own quarters or turn State's evidence no conviction can ever be had of the guilty who have caused the disturbance and trouble.

I trust that I have fully covered the information desired in this report, and have the honor of being,

Your obedient servant,

A. C. HAMILTON,  
Assistant United States Attorney.

PRECEDENTS.

The records of the Regular Army fail to disclose any precedent for the discharge of a large body of enlisted men at one time, either prior to or at the end of their enlistment.

I quote from letter of The Military Secretary, General Ainsworth, under date of December 10, 1906, addressed to the Secretary of War:

No record of the summary discharge from the Regular Army, prior to the recent discharge of a battalion of the Twenty-fifth Infantry, of a considerable number of enlisted men at one time has been found.

Cases of the discharge of individual enlisted men without honor and without trial by court-martial are not infrequent. The official records show that during the fiscal year ended June 30, 1906, discharges without honor were ordered by the War Department, without trial by court-martial, in the cases of 352 enlisted men of the Regular Army. Of these 86 were discharged on account of "fraudulent enlistment," 113 on account of "desertion," 8 on account of "desertion and fraudulent enlistment," 107 on account of "imprisonment under sentence of civil court," and 38 on account of "having become disqualified for service through own misconduct."

I ask that the letter from which I have just quoted may be printed in full in the RECORD.

Pages 312-313, Senate Document 155:

MEMORANDUM FOR THE SECRETARY OF WAR.

The Secretary to the President, in a letter dated December 7, 1906, advises the Secretary of War that the President wishes him to "give him some instances, of which he knows there must be many, where the Department, the commanding generals of departments, or colonels of regiments have discharged men or mustered them out without honor in any other way without court-martial."

A memorandum, furnished by The Military Secretary to the Secretary of War and by him transmitted to the Secretary to the President on the 5th instant, contained a list of a number of instances of the summary discharge from the volunteer service during the civil war of large numbers of men because of misconduct on their part.

No record of the summary discharge from the Regular Army, prior to the recent discharge of a battalion of the Twenty-fifth Infantry, of a considerable number of enlisted men at one time has been found.

Cases of the discharge of individual enlisted men without honor, and without trial by court-martial, are not infrequent. The official records show that during the fiscal year ended June 30, 1906, discharges without honor were ordered by the War Department, without trial by court-martial, in the cases of 352 enlisted men of the Regular Army. Of these, 86 were discharged on account of "fraudulent enlistment," 113 on account of "desertion," 8 on account of "desertion and fraudulent enlistment," 107 on account of "imprisonment under sentence of civil court," and 38 on account of "having become disqualified for service through own misconduct."

In addition to the discharges without honor ordered by the War Department, a considerable number of the discharges issued by subordinate military authorities must, under paragraph 148 (2-d), Army Regulations, have been discharges without honor. That paragraph requires the blank form for discharge without honor to be used when a soldier is discharged: "(d) Where the service has not been honest and faithful—that is, where the service does not warrant his reenlistment." The number of such discharges can not be ascertained without an examination of the record of each of the many enlisted men who were discharged during the year. Such an extended examination has not been made, because it is believed that the foregoing statement with regard to the discharges without honor ordered by the War Department is sufficient to show the general practice of the Department with regard to such discharges.

F. C. AINSWORTH,  
The Military Secretary.

WAR DEPARTMENT,  
THE MILITARY SECRETARY'S OFFICE,  
December 10, 1906.

This letter shows to what extent and for what reason, in individual cases only, the powers conferred on the President, Secretary of War, and so forth, by the fourth article of war have been exercised. The official records show that during the fiscal year ended June 30, 1906, discharges without honor were



ordered by the War Department, *without trial by court-martial*, in the cases of 352 enlisted men of the Regular Army. Of these there were discharged—

Eighty-six on account of "fraudulent enlistment."

One hundred and thirteen on account of "desertion."

Eight on account of "desertion and fraudulent enlistment."

One hundred and seven on account of "imprisonment under sentence of civil court."

Thirty-eight on account of "having become disqualified for service through own misconduct."

These are the causes for the discharge without honor of the individual enlisted men on the order of the President or of the Secretary of War, without a trial, during the year 1906.

And again, under date of December 5, General Ainsworth writes to the Secretary of War:

A protracted examination of the official records has thus far resulted in failure to discover a precedent in the Regular Army for the discharge of those members of three companies of the Twenty-fifth Infantry who were present on the night of the 13th of August, 1906, when an affray in the city of Brownsville took place.

In an effort to seek precedents an attempt is made to show that in the case of Company G, Eighth Infantry, United States Army, occurring in 1860, at that time a part of the command of Lieut. Col. Robert E. Lee, that a precedent can be found; but in that case the men of the offending company were not dismissed, but simply transferred to other companies of the same regiment and prohibited from reenlistment at the expiration of their respective terms, and the latter portion of the order was disregarded, if ever issued, as the Army records show. The Military Secretary adds:

In view of the foregoing statement it will be seen that the action taken in 1860, in the case of Company G, Eighth Infantry, is not a precedent for the action taken in 1906 in the case of the members of the Twenty-fifth Infantry.

Permit me, Mr. President, also to call attention and to have included in full in the RECORD as a part of my remarks, without reading that part from which I quote, Senate Document 155 and Appendix:

Pages 311-312:

*Instances of the summary discharge of whole organizations for misconduct; also of the summary discharge, without honor, of individual enlisted men.*

#### MEMORANDUM FOR THE SECRETARY OF WAR.

The Secretary to the President, in a letter dated December 1, 1906, advises the Secretary of War that the President would like to have him "look up any precedents (Lee's or others) for the action taken in discharging the battalion of the Twenty-fifth Infantry, and if there exist any such, send them to the President."

A protracted examination of the official records has thus far resulted in failure to discover a precedent in the Regular Army for the discharge of those members of three companies of the Twenty-fifth Infantry who were present on the night of August 13, 1906, when an affray in the city of Brownsville took place.

The case referred to as "Lee's" by the Secretary to the President is undoubtedly the case of Company G, Eighth Infantry, concerning which an interview with Mr. J. C. Hesse was recently published in the Washington Post. In that interview it was stated that, by order of Lieut. Col. Robert E. Lee, the members of Company G were transferred to other companies of the same regiment and prohibited from reenlistment on the expiration of the terms of enlistment under which they were then serving. A search for papers containing details of the occurrence has resulted in failure to find them, the original papers having been returned in 1860 to the Department of Texas, where they were undoubtedly lost or destroyed at the time of the surrender of the troops in that department to the Confederate military authorities.

The records show, however, that on March 18, 1860, members of Company G, Eighth Infantry, at Fort Davis, Tex., took from the guardhouse a citizen who was confined there and, without opposition from the guard, hanged him to a tree near by until he was dead. The records also show that by order of the regimental commander twenty-seven men of this company were detached from the company and attached to other companies of the regiment, "to restore their discipline," and that twelve other men of the company were transferred to other companies by order of the regimental commander without the cause of transfer being stated. The regimental orders are not on file, and it is impossible to state whether the reenlistment of these transferred men was or was not prohibited; but as the records show that some of the transferred men did reenlist, it is evident that if an order prohibiting their reenlistment was given, it was not carried into effect.

In view of the foregoing statement it will be seen that the action taken in 1860 in the case of Company G, Eighth Infantry, is not a precedent for the action taken in 1906 in the case of members of the Twenty-fifth Infantry.

In the volunteer service during the civil war there occurred numerous instances of the summary discharge of large numbers of men because of misconduct on their part. Following are some of those instances:

The members of Company A, First Eastern Shore Maryland Infantry Volunteers, were mustered out of service August 16, 1862, by order of the general commanding the Eighth Army Corps because they refused to serve in Virginia.

The members of Company K, First Eastern Shore Maryland Infantry Volunteers were dishonorably discharged without trial, July 2, 1863, pursuant to the order of the general commanding the Eighth Army Corps, subject to the approval of the Secretary of War, for refusing to leave the section of the State in which it was claimed that they had enlisted to serve. The action was approved by the Secretary of War July 23, 1863.

The First Regiment, United States Reserve Corps (Missouri Infantry), was mustered out of service during September and October, 1862, pursuant to orders of the War Department, on account of the regiment being in a state bordering closely on mutiny as a result of alleged misunderstanding as to the terms of enlistment.

Companies H, I, and K, Fifth Missouri Cavalry, and Company G, Fourth Missouri Cavalry, were mustered out of the service of the United States without trial by court-martial, in pursuance of orders from headquarters District of Missouri, dated September 20, 1862, by reason of mutinous conduct and disaffection of the majority of the members of those companies.

Company C, Fremont Body Guard, was summarily discharged by order of Major-General Halleck, November 30, 1861, on account of the members refusing to be consolidated with any other organization of Missouri volunteers.

The members of Company G, Tenth New Jersey Infantry Volunteers, were discharged without trial April 8, 1862, pursuant to orders from the War Department, because they refused to do duty as infantry, claiming that they were deceived into the belief that they were entering the cavalry branch when they enlisted.

The Eleventh Regiment, New York Infantry Volunteers (First Fire Zouaves), was mustered out of service June 2, 1862, pursuant to orders from the War Department, by reason of general demoralization, numerous desertions, and at the request of officers and enlisted men of the organization.

The Sixtieth Regiment, Ohio Infantry Volunteers, was summarily discharged November 10, 1862, pursuant to a telegram from the War Department, because the regiment was "disorganized, mutinous, and worthless."

F. C. AINSWORTH,  
The Military Secretary.

WAR DEPARTMENT,  
THE MILITARY SECRETARY'S OFFICE,  
December 5, 1906.

Pages 539-540:

#### APPENDIX 4.

THE MILITARY SECRETARY'S OFFICE,  
WAR DEPARTMENT,  
Washington, D. C., December 1, 1906.

MY DEAR MR. LOEB: Herewith I send you a clipping from the Washington Post of November 28, 1906, containing the article referred to in your note of this morning.

The "Captain" Hesse referred to in that article was Corpl. John C. Hesse, of Company G, Eighth Infantry, and he was clerk at regimental headquarters at the time of the occurrence. Subsequently, when the regiment was surrendered to the Confederates by General Twiggs, Corporal Hesse saved the regimental flags by wrapping them around his body, under his clothing, and brought them north in safety, receiving afterwards a medal of honor for his action.

Mr. Hesse has been a clerk in the War Department since 1861, and is now a chief of division in The Military Secretary's Office.

Very truly, yours,

F. C. AINSWORTH,  
The Military Secretary.

HON. WILLIAM LOEB, JR.,  
Secretary to the President, Washington, D. C.

[Inclosure.]

[From the Washington Post, Wednesday, November 28, 1906.]

LEE PUNISHED TROOPS—ENTIRE COMPANY DISBANDED BECAUSE OF LYNCHING—LIKE THE BROWNVILLE CASE—CAPT. J. C. HESSE TELLS OF AFFAIR DOWN IN TEXAS JUST BEFORE THE CIVIL WAR WHICH IS A PARTIAL PRECEDENT FOR PRESIDENT ROOSEVELT'S NOW FAMOUS ORDER—SOME FEATURES IDENTICAL.

A case somewhat similar to the recent dismissal, by Presidential order, of the three companies of colored troops because of the trouble at Brownsville, Tex., is that of the discharge of Company G, of the Eighth Regiment, at Fort Davis, Tex., in the summer of 1860.

In the Brownsville incident, as a result of the alleged rioting of the soldiers, one man, a bartender, was killed. The victim in the Fort Davis affair also was a bartender, he having been lynched by unknown parties, supposed to be soldiers, after he had killed a member of the company by striking him with his fist. The soldiers at Brownsville were ordered dismissed without honor by the President, while the soldiers at Fort Davis were transferred to other companies and not dismissed until they had served out their terms of enlistment.

The latter incident occurred during the Administration of President Buchanan, but there is no record that the action in the case was taken by virtue of any order given by him. The responsibility for the order was assumed by Robert E. Lee, later the famous Confederate general, who was at that time in command of United States troops in Texas.

#### NO RECORD OF DISMISSAL.

Possibly on account of the civil war breaking out soon after the incident, or it might have been because of the destruction of the records in the case before they reached the War Department, it is thought no official record of the dismissal of the company is in existence. At least so says Capt. J. C. Hesse, who is probably the only surviving member of the company, now employed in the office of The Military Secretary of the Army.

Captain Hesse, in speaking of the occurrence yesterday, said he had often regretted he had kept no diary during his Army service, referring especially to the affair at Fort Davis, which he said he regarded as one of the most interesting of his career. Although he was transferred with the other sixty-five members of the company, and it was ordered that at the end of his enlistment he should not be allowed to reenlist, Captain Hesse, through a personal appeal to Colonel Lee, and on account of his previous record for integrity, was absolved from any blame in the matter and was given a clear record. He had been transferred to Company A of the Eighth Regiment, and at the end of his term he enlisted again and served with honor in the civil war. Before the end of the war he was transferred to Washington to take up work in the general service.

#### FLED FOR HIS LIFE.

"It happened on the night of St. Patrick's Day in 1860," said Captain Hesse. "After tattoo some of the soldiers went into a saloon, where, in the midst of a quarrel, the barkeeper struck one of the men on the neck, causing his death. The occurrence caused great excitement among the men, and the barkeeper fled for his life. Soon after he turned up at post headquarters and appealed that he be saved from the hands of the mob, which he said was pursuing him. He was ordered placed in the guardhouse and the guard was increased.

The next night the corporal of the guard took four of the men for the purpose of making the 'grand rounds.' During the absence of the corporal and the men the guardhouse was forced open and the bar-

keeper taken away. The corporal, returning a half hour later, instituted a search, with the result that the barkeeper was found hanging to a tree dead, his body yet warm.

"The alarm was given immediately to the officer of the day, who ordered that an investigation be made of the quarters of the soldiers and of every other person at the fort. As a result it was found that every man was in his bunk, where all apparently had been asleep for several hours. The mystery has never been cleared up, so far as I know, to this day.

"However," continued Captain Hesse, "seven enlisted men were arrested on suspicion of being implicated in the lynching, and were taken to El Paso, 150 miles distant, in which town was located the nearest civil court at that time. There they were tried and acquitted.

#### LEE ORDERED DISBANDMENT.

"Col. Washington Seawell, who was the commanding officer of the fort, reported the affair to Colonel Lee, who was in command of the Department of Texas, with the result that an investigation was made in the manner prescribed by the Army Regulations. The inquiry, although rigid, failed to fasten the blame on any person, and at its conclusion Colonel Lee ordered the company to be disbanded and the members transferred to other companies to be discharged at the end of their enlistments without honor—that is, without the right to reenlist in the Army."

The precedents of the civil war cited as a justification for the discharge of the battalion at Brownsville seem to me, Mr. President, absolutely inapplicable to this case, and I quote likewise from Senate Document 155, page 312:

Memorandum furnished by The Military Secretary.

Members of Company A, First Eastern Shore Maryland Volunteers, mustered out of the service August 16, 1862 (presumably honorably discharged), because they refused to serve in Virginia.

Members of Company K, same regiment, were dishonorably discharged, without trial, July 2, 1863, for refusing to leave the section of the State in which it was claimed that they had enlisted to serve.

First Regiment, United States Reserve (Missouri Infantry), mustered out on account of the regiment being in a state bordering on mutiny on account of an alleged misunderstanding as to the terms of enlistment.

Company C, Fremont Body Guard, discharged on account of members refusing to be consolidated with any other organization of Missouri Volunteers.

Company G, Tenth New Jersey Infantry, because they refused to do duty as infantry, claiming that they were deceived into the belief that they were entering into the cavalry branch when enlisted.

These cases would seem sufficient to establish the conclusion that in no essential particular do they stand as a precedent for the action we are now considering in the case of the Twenty-fifth Infantry.

#### PREVIOUS AFFAIRS.

It is true, Mr. President, that previous affrays to that at Brownsville have occurred in the Army, at posts garrisoned by both white and colored soldiers of the Regular Army, notably, the one referred to by the distinguished Senator from Idaho as occurring at Fort Sturgis, Dak. T., and, to again quote from Senate Document 155, pages 328, 329, 331, 541, and 542:

HEADQUARTERS, DEPARTMENT OF DAKOTA,  
Fort Snelling, Minn., November 10, 1885.

Respectfully returned to the Adjutant-General of the Army, through the headquarters of the Division of the Missouri.

The inclosed letter is, in the main, a just and temperate account of the occurrences at Sturgis City and Fort Meade, of which it speaks. I should take exception to but one of the statements which Mr. Caulfield makes. He states, as an ascertained fact, that "Doctor Lynch" was assassinated by a colored soldier. Doubtless he is fully convinced of the truth of this statement; but I submit that the inclosed copy of a report from Colonel Sturgis of the testimony given before the coroner's jury impaneled to determine the cause of Doctor Lynch's death, shows that while a case of grave suspicion was made out against the soldier, Hallon, the evidence was by no means conclusive. Of course since the brutal murder of Hallon by the mob of Sturgis City it has been impracticable to determine the question of his guilt or innocence. I inclose a copy of the proceedings of a board of officers, convened by order of Colonel Sturgis to inquire into the facts connected with the killing of Bell. The conclusions of the board confirm the statements of Mr. Caulfield.

It is not probable that all the persons who were concerned in the murder of Bell will be detected and punished. Four men have been arrested, and if the evidence against them be sufficient to establish their guilt they will, without doubt, be confined and tried. In their cases the machinery of the law will act speedily.

I do not recommend the removal of the colored troops from Fort Meade. It is not alleged that they, as a body, have committed any crime or have been guilty of any disorder. Certain men belonging to one of the companies are accused of a most serious crime, but there is nothing to connect with it the other men of their company or any of the men of the other companies. There is no evidence to show that the peace of Sturgis City, in the future, is threatened by any of them. I do not believe that it is seriously threatened by them.

I have had much experience with colored troops, and I have always found them as well behaved and as amenable to discipline as any white troops that we have. The characteristic submissiveness of their race is manifested in the readiness with which they yield to military control.

They are much more temperate than our white troops, and crime and disorders resulting from intoxication are comparatively rare among them.

The situation at Fort Meade is an unfortunate one. It is very undesirable that a military post and a frontier town should stand in such close proximity to each other as Sturgis City and Fort Meade do; unfortunate possibly for the town, unquestionably unfortunate for the post. But the post was established before the town was founded, and I do not think that there would have been any town but for the post. Still the evils which result from this juxtaposition are not absolutely unavoidable.

The military authorities at the post will, I am sure, do their part to prevent the commission of crime, and if the civil authorities of the town will do theirs as well there will be no occasion whatever for apprehension.

I take it for granted that in the Territory of Dakota the keeping of houses of ill-fame is prohibited by law, but notwithstanding the law there are in the town two brothels which would appear to have been established for the express purpose of catering to the taste and pandering to the passions of the colored troops, for they are "stocked" with colored prostitutes—negresses and mulattoes.

They are, I am assured, places of the vilest character, and it was at one of them that the affray of September 19 occurred. Had no such place existed, it is most improbable that any affray would have occurred, and if the people of Sturgis City suffer such places to exist they must, I submit, expect the natural result of their existence—frequent broils, and from time to time the commission of the most serious crimes. And I submit further that until the people of the town shall have suppressed these dens, which equally debauch the troops of the post and threaten their own safety, they will not be in a position to ask the Government to change its garrison.

ALFRED H. TERRY,  
Brigadier-General, Commanding.

It is sad to say that the conditions as expressed in this communication of General Terry exist too much in connection with almost all our Army posts and in their immediate vicinity; and it is not out of place to say that such conditions existed in the immediate vicinity of Fort Brown and had existed there for a great many years, as the testimony and the records of investigation by your committee show.

Mr. FORAKER. Mr. President, will the Senator allow me to interrupt him?

THE VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Ohio?

Mr. BULKELEY. Certainly.

Mr. FORAKER. I do not know whether the Senator calls attention or not to the fact, which I think ought to be noted at that point in his speech, that the company to which the men belonged who participated in the shooting affray upon which he is commenting was not one of the three companies that were at Brownsville; and, in the second place, there was no trouble whatever to ascertain who the men were and identify the men who were guilty of participating in that shooting affray. Another thing which should be noted is that that happened twenty-five years ago.

Mr. BULKELEY. In 1885.

Mr. FORAKER. And with one exception, there is no man in that battalion of the Twenty-fifth Infantry who was in the service and was in the battalion at that time.

Mr. BULKELEY. That was in 1885, as I have stated, and I am glad to have the Senator call my attention to the fact, because I wish to add that, in all the affrays that have occurred in the Army and in connection with colored troops in the Army, this particular battalion of the Twenty-fifth Infantry has never in the remotest way been connected with any of them.

I was about to read the indorsement of the War Department. This was during the Administration of a Democratic President and a Democratic Secretary of War, Mr. Endicott, and it is in reply to a letter addressed by a citizen of Dakota Territory, who had applied to have the troops removed.

WAR DEPARTMENT,  
Washington, December 22, 1885.

SIR: In reply to your letter of the 27th of September last commenting upon the outrages committed at the town of Sturgis, Dak. Ter., by colored soldiers of the Twenty-fifth Infantry, stationed at Fort Meade, and suggesting the removal of the colored troops to some other post and the substitution of white soldiers in their place, I have the honor to invite attention to the inclosed copy of the report of Gen. A. H. Terry, commanding the Department of Dakota, to whom the matter was referred, and to say that both the Department and the Lieutenant-General of the Army concur in the views as expressed therein by General Terry.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,  
Secretary of War.

HON. B. G. CAULFIELD,  
Deadwood, Dak. T.

I want to say in this connection, because one of the charges against these men is a conspiracy of silence, that there was no difficulty at Fort Sturgis, where the affray to which I have alluded occurred, or at New Orleans, or where other affrays occurred, in obtaining the necessary evidence from their comrades, colored or white, when they believed them guilty of participation in any crime.

#### APPENDIX 5.

NEW ORLEANS, LA., December 4, 1906.

SIR: About six years ago Harry McDonald, a white United States soldier, of Fort St. Philip, La., while intoxicated, followed James Butler, a white citizen, at night to his home above Fort St. Philip and tried to force Butler to take him into his house. The latter refusing, McDonald shot and killed him. After McDonald's return to the fort, news of the homicide having spread, the latter was suspected, arrested, and searched; his revolver was carefully examined, its recent discharge discovered, and every soldier, from the commanding officer to the humblest



private, united then and there and at the trial in ferreting out all the evidence in their power about this crime. The accused was convicted of murder, and is now in the Louisiana Penitentiary for life.

Again, about four years ago, at the same fort, Harry Morgan, a private in one of the United States Artillery companies, was charged with killing John H. McCloskey in a drunken brawl at night in one of the grogeries which cause so many similar crimes in this country. Though his fellow-soldiers, believing Morgan was not guilty of this crime, raised a fund for his defense, every soldier and employee at that fort volunteered all they knew, both before and at the trial on the witness stand, about this case. Morgan was acquitted by a jury of white citizens in Plaquemines Parish.

Once since then, in my official capacity, I tried and convicted United States soldiers of a lesser offense—assault and battery—committed above Fort Jackson, on the west bank of the Mississippi River, and again the white comrades in arms of the accused told the whole story of the trouble. Each of these cases occurred out of hearing of the forts, and but for the evidence of their brother soldiers, either then with the accused or who subsequently identified them with the crimes, there would have been a failure of justice.

In my own district twenty-two years ago, after a dispute over race precedence at a liquor bar at Dedrick Wischusen's store, in the parish of Plaquemines, Charles Campbell, a colored man, drew a pistol there and shot Theodore Tripkovich, a splendid type of an Austrian, dead. A jury, drawn by Republican commissioners, largely composed of colored men, to their eternal credit, sent Campbell to the scaffold for this crime, and he was hung.

The true friends of the colored people will teach them, as you are doing, that crimes can not be condoned or concealed by them without its reacting terribly on the race.

Respectfully, JAMES WILKINSON,

District Attorney, Twenty-ninth Judicial District.

HON. THEODORE ROOSEVELT,  
President of the United States.

These cases are all of record.

J. W.

This report of General Terry and its approval by Secretary Endicott, indicate the character of almost every affray in the Army whether by white or colored troops, for both classes are included as disclosed by Army records.

An effort has been made in accord with all these preliminary investigations, to construe the proceedings of the court and its rendered verdict, in the case of the court-martial of Major Penrose, commanding at Fort Brown on the night of the affray—and who was charged with "neglect of duty"—as a verdict rendered against the soldiers. I will ask here leave to insert without reading, the charges and specifications on which Major Penrose was both tried and acquitted, as taken from the records of the court (see pp. 4 and 1248):

[Extracts from proceedings of a general court-martial convened at Headquarters Department of Texas, San Antonio, Tex., February 4, 1907, in the case of Maj. Charles W. Penrose, Twenty-fifth United States Infantry.]

(Page 4): The accused was then arraigned upon the following charge and specifications:

"CHARGE.—Neglect of duty, to the prejudice of good order and military discipline, in violation of the sixty-second article of war.

"Specification I.—In that Maj. Charles W. Penrose, Twenty-fifth United States Infantry, commanding the post of Fort Brown, Tex., after being on the morning of August 14, 1906, between 1 and 2 a. m., duly informed by the mayor of Brownsville, Tex., one Doctor Combe, that soldiers of his command had shot and killed one civilian of the city of Brownsville, Tex., and badly wounded a lieutenant of police of that city, did immediately thereafter and until daylight wholly fail and neglect to take or order sufficient measures or action by prompt inspection of guns or pistols or otherwise, or any due exercise of discipline, to detect the men engaged in said attack and killing, or any of them, or to restrain or bring them to justice for said crime. This at Fort Brown, Tex., August 14, 1906.

"Specification II.—In that Maj. Charles W. Penrose, Twenty-fifth United States Infantry, being aware of the feeling of resentment in his command toward citizens of Brownsville, as a result of assaults upon certain individuals of the command, and having been notified by a Mr. Evans, of Brownsville, about 5 p. m. August 13, 1906, of an attack upon his wife by a soldier of the command, and knowing of the inflamed feeling existing in the town toward the soldiers as a result thereof, did nevertheless fail to give any orders to Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring special vigilance on his part or that of the guard or to make frequent inspections or any inspections during the night after 12 o'clock, and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command, or in any manner to watch, restrain, or discipline said men; by reason of which failure certain men of his command, to the number of about twelve or more, were enabled to assemble, and did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof. This at Fort Brown and Brownsville, Tex., August 13 and 14, 1906."

To which the accused pleaded as follows:

To the first specification, Not guilty.

To the second specification, Not guilty.

To the charge, Not guilty.

The judge-advocate here addressed the court as follows:

After a long investigation, covering weeks, the court was closed, and the accused, Major Penrose, was acquitted of the charge of neglect of duty, but found guilty under an amended specification, on which he had not been tried. The court, however, acquitted him, and the verdict of the court was approved by the department commander, as appears from the following extract from the record:

Page 1248:

\* \* \*. The court was closed, and finds the accused, Maj. Charles W. Penrose, Twenty-fifth United States Infantry—

"Of the first specification: 'Not guilty.'"

"Of the second specification: 'Guilty, except the words 'being aware of the feeling of resentment in his command toward citizens of Brownsville, as a result of assaults upon certain individuals of the command, and having been notified by a Mr. Evans, of Brownsville, about 5 p. m. August 13, 1906, of an attack upon his wife by a soldier of the command, and knowing of the inflamed feeling existing in the town toward the soldiers as a result thereof, did nevertheless fail to give any orders to Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring special vigilance on his part or that of the guard or to make frequent inspections or any inspections during the night after 12 o'clock, and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command, or in any manner to watch, restrain, or discipline said men; by reason of which failure certain men of his command, to the number of about twelve or more, were enabled to assemble, and did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof. This at Fort Brown and Brownsville, Tex., August 13 and 14, 1906.'"

ville, as a result of assaults upon certain individuals of the command, and; and the word 'inflamed;' and the words 'special vigilance on his part or that of the guard or to make;' and the words 'and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command or in any manner to watch, restrain, or discipline said men, by reason of which failure;' substituting for the words 'by reason of which failure' the words 'after which;' and except the words 'to the number of twelve or more were enabled to assemble and;' and of the excepted words 'not guilty;' and of the substituted word 'guilty.'

"So that the second specification, as amended, shall read as follows:

"Specification II: In that Maj. Charles W. Penrose, Twenty-fifth United States Infantry, having been notified by a Mr. Evans, of Brownsville, about 5 p. m. August 13, 1906, of an attack upon his wife by a soldier of the command, and knowing of the feeling existing in the town toward the soldiers as a result thereof, did nevertheless fail to give any orders to Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring frequent inspections, or any inspections, during the night after 12 o'clock, after which certain men of his command did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof. This at Fort Brown and Brownsville, Tex., August 13 and 14, 1906. And the court attaches no criminality thereto on his part."

"Of the charge: 'Not guilty.'"

"And the court does therefore acquit him, Maj. Charles W. Penrose, Twenty-fifth United States Infantry."

The judge-advocate was then recalled, and the court, at 7.05 p. m. adjourned sine die.

GEO. LE ROY BROWN,

Colonel Twenty-sixth Infantry, President.

CHAS. E. HAY, Jr.,

Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,  
San Antonio, Tex., March 25, 1907.

In the foregoing case of Maj. Charles W. Penrose, Twenty-fifth United States Infantry, the proceedings, findings, and acquittal are approved.

WM. S. MCCASKEY,

Brigadier-General, U. S. Army, Commanding Department.

I submit, Mr. President, that the soldiers were neither directly nor indirectly parties to that trial; that they were never summoned nor appeared before the court, except possibly as witnesses, either in person or by counsel. I am not familiar with the powers or practice of a court-martial; but it looks strange to a layman that an indictment or, as in this case, charges and specifications, to which an accused officer has pleaded and submitted himself for trial can, after the evidence and arguments are concluded, be so amended and changed as to suit the whims of a court as to the character of the verdict they shall render. At all events, Major Penrose was acquitted of the charge of "neglect of duty," although found guilty under one of the amended specifications. If this finding can be construed as implicating the soldiers in this affray—that is, the acquittal of Major Penrose and a verdict of guilty against the soldiers—it might be likened, Mr. President, to frontier justice in the early days as some of us were accustomed to hear it, of the trial of an accused for murder and the conviction of his neighbor for horse stealing.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Ohio?

Mr. FORAKER. I dislike to interrupt the Senator, and I will not do it if he has the slightest objection—

Mr. BULKELEY. I have no objection; it is a relief sometimes to be interrupted.

Mr. FORAKER. But it occurred to me that I ought to call attention there, for fear the Senator may not do it, to the fact that at the time when the Senator from Idaho [Mr. BORAH] insisted that these soldiers had been court-martialed and found guilty they were not soldiers at all, for as a result of their discharge without honor they were not in the Army and were not subject to court-martial. That is not extraordinary, though, measured by other circumstances and features of this most extraordinary case. Trying a neighbor for horse stealing when he was not charged with anything is not a circumstance to what has been done here.

Mr. BULKELEY. Before leaving the discussion of this part of the case, Mr. President, I desire to call to the attention of the Senators that, at one period, November 18, 1906—and in this I shall be obliged to disagree for a moment with my distinguished friend from Ohio in some portion of his remarks—in a moment of inspiration it occurred to the Secretary of War that a possible injustice had been done to these soldiers, that the procedure which led up to the suspending of the order dismissing the soldiers of the battalion might have been irregular from the standpoint of law, practice, or precedent, or that new and further evidence might be produced. What I want to call the attention of Senators to is the fact that there was a time when the Secretary of War seemed to disagree with the President.

I will read the order of November 18, 1906, when, as perhaps you will all remember, the President was absent on a trip to view the great canal being constructed on the Isthmus. Together with that I will read another order, under date of November 20, 1906, directing the discharge of the soldiers of the

Twenty-fifth Infantry to continue, Senate Document No. 155, pages 187 and 189:

[Telegram.]

WAR DEPARTMENT, November 18, 1906.

THE COMMANDING GENERAL, DEPARTMENT OF TEXAS,  
San Antonio, Tex.:

Secretary of War directs you suspend action under order for discharge men of Twenty-fifth Infantry until further orders from here. Telegraph acknowledgment of this.

AINSWORTH,  
The Military Secretary.

Two days later, however, for some cause not disclosed by the official record, he issued another order, directing the discharge to proceed.

[Telegram.]

THE MILITARY SECRETARY'S OFFICE,  
Washington, November 20, 1906.

COMMANDING GENERAL DEPARTMENT OF TEXAS,  
San Antonio:

Secretary War directs you proceed with discharge of members of Twenty-fifth Infantry as originally ordered. Telegraph acknowledgment receipt of this and subsequent action.

AINSWORTH,  
The Military Secretary.

I have been unable to obtain from the records or from the office of the Adjutant-General the correspondence or telegrams that passed between the President and the Secretary of War. Under date of April 25, 1908, I wrote the Adjutant-General, and received his reply, dated April 27, 1908, as follows:

UNITED STATES SENATE,  
Washington, April 25, 1908.

Maj. Gen. F. C. AINSWORTH, United States Army,  
Adjutant-General, War Department, Washington, D. C.

MY DEAR GENERAL: It is shown by the official documents in regard to the discharge of the colored soldiers at Brownsville, as contained in Senate Document No. 155, that on November 18, 1906, the Secretary of War issued an order suspending the execution of the order for the dismissal of these soldiers; that on the 20th of November, 1906, the record shows that the Secretary of War directed the immediate execution of the President's original order.

I fail to find anything in the official record relative to the reasons for the suspension, and later for the renewing of the President's order of dismissal. Are there any records, documents, or otherwise showing that the President directed the carrying out of the original order?

I understand that the President, at the time when the orders of the Secretary of War were issued, was either on a voyage to or at Panama. If there be any such communications addressed to or received from the President, or other records relating to the suspension of and later the renewing of the President's order of dismissal I would respectfully ask, if you can properly do so, that I be furnished with a copy of the same.

Yours, truly,

M. G. BULKELEY.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
Washington, April 27, 1908.

Hon. M. G. BULKELEY,  
United States Senate.

MY DEAR SENATOR: In response to your letter of the 25th instant relative to the suspension and subsequent renewal of the order for the discharge of certain colored soldiers, I beg leave to say that the printed record contains copies of absolutely all the documents relating to the matter that are on file in my office. Nothing has ever reached my office or come to my knowledge relative to the reasons for the suspension and subsequent renewal of the order for the discharge of these men.

Very respectfully,

F. C. AINSWORTH,  
Adjutant-General.

I am therefore compelled to rely upon the press reports of that period for the information which I have sought from the official records of the War Department. Of course I can not vouch entirely for their accuracy, but I find no record anywhere of the denial of their truthfulness. I ask that the article from the Washington Post of November 21, 1906, from which I quote, may be printed in full as a part of my remarks. It is the best record I can obtain of the reason for the suspension of the order of the President and its renewal.

Mr. SMITH of Michigan. Is the article which the Senator is about to read from the Washington Post coincident with the order of the Secretary of War suspending proceedings against these soldiers?

Mr. BULKELEY. I will give the dates. The date of the suspension order is November 18; the date of its renewal November 20; and the article I quote is dated November 21, apparently written in view of all the circumstances which had transpired and which were transpiring during these two or three days.

[The Washington Post, November 21, 1906.]

TAFT'S BOLD STEP.

Is there danger that the suspension by Secretary Taft of the President's order dismissing the three colored companies of the Twenty-fifth Infantry, without honor, will cause friction between the President and the man who has been his chief lieutenant the past two years?

This is the question public men and Army officers are asking each other when they discuss this situation privately.

The situation is an embarrassing one for the President, whichever horn of the dilemma he may take. After reviewing the facts in this case, as submitted to him, the President issued the now famous order

that put a whole battalion of men out of the service dishonorably, and then started for the isthmus. Some comment has resulted because the order was not promulgated until after the election. The action of the President was supposed to be final, and if criticism followed it might be reasonably supposed that the incident in large measure would be forgotten before the President again reached Washington.

TAFT ASSUMES RESPONSIBILITY.

If this was the expectation, Secretary Taft succeeded admirably in reviving public interest and intensifying the criticism of the President's original order. Of course, the President could not be expected to know of the deluge of complaints and protests with which the Department was flooded after his departure, nor did he know that the New York Republican Club had condemned his action and called for fair play for these colored troops.

Secretary Taft did know these things, however, and he assumed the responsibility of suspending the Executive order until the President could be heard from. Now, with the matter afresh in the public mind, the President must add to the weight of these protests by compelling submission to his original order, if he overrides the Secretary, or admit that he may have acted hastily if he rescinds his order and reopens the case. Which he will do may be known to-day, by which time Secretary Taft hopes to be in communication with the President.

Meanwhile the War Secretary will say nothing. He refused yesterday to say more than "I can't discuss the case until to-morrow." This was interpreted to mean that the Secretary could say nothing until he had heard from the President and received his instructions. The Secretary also declined to say whether he had been in communication with the President by wireless.

CONFERS WITH OLIVER.

Secretary Taft arrived in Washington from New York yesterday afternoon and went at once to his office, where he summoned General Oliver, Assistant Secretary of War; Major-General Ainsworth, Military Secretary, and Brig. Gen. Thomas H. Barry, Chief of Staff, for a conference. This conference lasted more than an hour, and before it was concluded Mr. Loeb, Secretary to the President, also was summoned to the Department. Mr. Loeb was called into the conference presumably to give some information concerning the time when the President was expected to reach Porto Rico and the possibility of getting access to him over the cable, a much more satisfactory method of communication than by wireless.

It was suggested yesterday after the conference that Secretary Taft's reason for refusing to talk was his knowledge of the fact that the President would not rescind his order, and that it had been decided not to make this decision public until it was possible to accompany it with copies of the reports of Colonel Bixby and General Garlington. These reports have been in the hands of the Public Printer for several days, and it is expected that they will be ready for distribution to-day.

It is hoped by officials of the War Department that their publication will set at rest the agitation which the President's order has aroused, as they are regarded by the officials as showing clearly the necessity for the dismissal of the negro soldiers, and that the action taken by the President was the only thing that could be done under the circumstances.

This surmise, on the other hand, is discounted by the positive statement from a reliable source that officials here have not been in communication with the President since he left Colon, and that nothing has been heard from him on the subject of the dismissal of the troops.

DISPATCH FROM PRESIDENT.

A message from the President, however, had reached Gilchrist Stewart, of the Constitutional League, in New York City, in which the President declined to suspend his order discharging the colored troops unless the facts as known to him were shown to be false, but expressing his willingness to hear new facts bearing on that case.

Mr. Stewart cabled to President Roosevelt at Ancon, Panama, as follows:

"Republican county committee unanimously denounces discharge of colored soldiers. PARSONS, OLCOTT, BENNET, committee petitioning War Department. Newspapers emphatic. Developments and new facts warrant. Ask immediate suspension order."

The President's reply contained the following:

"Unless facts as known to me are shown to be false, the order will under no circumstances be revoked, and I shall not for one moment consider suspending it on a simple allegation that there are new facts until these new facts are laid before me. Inform any persons having new facts to have them in shape to lay before me at once on my return, and I will then consider whether or not any further action by me is called for."

"THEODORE ROOSEVELT."

NO WIRELESS COMMUNICATION.

At the Department yesterday, it was explained that the reason the President was able to reply to Mr. Stewart's cablegram, was that Mr. Stewart's inquiry was sent early Saturday and reached Colon before the cable office closed, while Secretary Taft's message was not sent until Saturday night, and doubtless missed the President. Since the Louisiana left Colon, both Secretary Taft and Secretary Loeb have been out of communication with the President, although repeated efforts have been made to pick up the ship by wireless. A message from the President, given out at the White House Monday, evidently was sent by regular telegraph from Colon and not by wireless from the Louisiana.

Pains were taken to show that Secretary Taft had not attempted to go over the head of the President in his absence, but had merely directed that the execution of the order be suspended. He has acquiesced in the delay in putting it into operation in order to afford the President an opportunity to reconsider if he wishes to do so.

Some Army officers contend that if the President had knowledge of the sentiment which his action has created and the criticism which it has caused, he might reopen the case and give the men affected an opportunity to defend themselves. Being out of the country, he has not had an opportunity to know how a large portion of the public regards the drastic course he took. Officials of the War Department contend, however, that the public will be thoroughly enlightened and approve the course of the President as soon as the report of General Garlington is published.

The War Department had no advices yesterday confirming the press dispatches from Fort Reno that twenty-five members of the Twenty-fifth Infantry already have been discharged under the original order. So far as the Department knows, it was said, only seven members of the battalion alleged to be responsible for the riot at Brownsville have been dismissed, and these were soldiers who were arrested at San



Antonio and were dismissed from the service after the courts failed to substantiate charges that the men participated in the riot at Brownsville.

At this point I will end the discussion of that phase of the question, as to the propriety and the legality and the precedents for the dismissal of these troops, and I will talk for a few moments of Brownsville, its characteristics, and the surrounding country, and I shall quote during these remarks from no less authority than Texas citizens themselves and those who live in and are familiar, and have been for years, with that part of the country.

#### BROWNSVILLE AND ITS CHARACTERISTICS.

Fort Brown, Tex., is a military post established during the Mexican war, 1846, and is contiguous to the city of Brownsville, near the mouth of the Rio Grande River; it had a population in 1900 of 6,305, as given by the Bureau of the Census, whose authority I append:

DEPARTMENT OF COMMERCE AND LABOR,  
BUREAU OF THE CENSUS,  
Washington, April 14, 1908.

Hon. MORGAN G. BULKELEY,  
United States Senate, Washington, D. C.

DEAR SENATOR BULKELEY: In response to your telephonic request of to-day, I take pleasure in giving you below, the data specified in regard to Brownsville, Tex., with the exception of the number of naturalized citizens, which was not tabulated at the Twelfth Census for cities with less than 25,000 inhabitants:

Population, 1900.		
Total, white, 6,287; negro, 18	-----	6,305
Male	-----	2,831
Female	-----	3,474
Native born	-----	3,843
Male	-----	1,755
Female	-----	2,088
Foreign born	-----	2,462
Male	-----	1,076
Female	-----	1,386
Males 21 years of age and over	-----	1,324
Native white	-----	500
Foreign white	-----	819
Negro	-----	5

Very respectfully,

W. S. ROSSITER, Acting Director.

It is, and always has been, necessarily a frontier post; it is separated from the business and residential portion of the city by a road, known as the Garrison road, and oftentimes called Fifteenth street; and it is in close proximity to this residential part that the affray occurred on the night of August 13-14, 1906. This post has been garrisoned since its establishment by both white and colored soldiers, commanded by distinguished and well-known officers of the Army, to the entire satisfaction of the citizens of Brownsville and without serious discrimination against the soldier, except that we find in the evidence that the police were more aggressive against the soldier for slight offenses, for the reason that the soldiers' fines, if inflicted, were always paid in cash. The Mexicans, if fined, were sent to the county jail or the workhouse.

Mr. HOPKINS. To work out the fine?

Mr. BULKELEY. To work out the fine. This is the testimony of Captain Kelly. He was a soldier of the civil war, in the Union army; settled at Brownsville at the close of the war, forty years ago and more; and is one of its most prominent and reputable citizens. He is president of a bank, and was the presiding officer of the investigating committee of the citizens of Brownsville immediately after this affray.

[Testimony of Captain Kelly, vol. 3, p. 2528.]

Q. Now, Captain, I will get you to state, during the entire time the Twenty-sixth was there, did you hear any complaints from the officers of any oppressive treatment whatever by the policemen of Brownsville against the soldiers?—A. I never heard an officer say so at all. I know there were two or three conflicts between drunken soldiers and Mexican policemen, and I have no doubt that the Mexican policemen when they got a man who was drunk did not treat him well.

Q. Whether he was a soldier or not?—A. Well, particularly if he were a soldier.

Q. Did not treat him well?—A. That is to say, I think they would strike a soldier harder and get him to the police station as fast as they could, for two reasons: First, when he was fined, he always managed to pay his fine. His comrades made it up. That appeared to be one of the reasons why they were very likely and very anxious to run a soldier in when they got a chance. I suppose there was some sort of divvy about the fines. I do not know that of my own knowledge. If they ran a Mexican in, he was simply sent to labor on the streets.

Q. He had no money to pay his fine?—A. No money to pay his fine.

By Senator FORAKER:

Q. What was the other reason?

Senator WARNER. He said one reason was that a soldier would pay his fine, and the other was that a Mexican did not.

These peaceful conditions seem to have been maintained in Brownsville, as between the citizens and the soldiers, up to the time of the order for the battalion of the Twenty-fifth Infantry to occupy the post.

The maintenance of this post, for the protection of the city of Brownsville and its people, both from foreign invasion and from the lawless inhabitants in the surrounding territory, was

insisted upon when the question of its abandonment was being considered by a board of Army officers in 1901; I will quote the strong and urgent reasons urged by officials and civilians alike for the retention of this and other posts on the Rio Grande frontier:

[Extracts from the location and distribution of military posts. House Doc. No. 618, Fifty-seventh Congress, first session, pp. 380 to 389, inclusive.]

#### 7. FORT BROWN, TEX.

[Telegram.]

DALLAS, TEX., October 2, 1901.

SECRETARY OF WAR, Washington, D. C.:

It is rumored that the Department contemplates abandoning Fort Brown, in this State. The importance of this post to effect the protection of the people of the lower Rio Grande frontier can not be overestimated, and I earnestly ask that the fort be maintained.

C. A. CULBERSON.

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
Washington, D. C., October 10, 1901.

Hon. CHARLES A. CULBERSON, U. S. Senator,  
Dallas, Tex.

SIR: The Secretary of War directs me to acknowledge the receipt of your telegram of the 2d instant, in which you remark that it is rumored that the abandonment of Fort Brown, Tex., is contemplated, and stating that the importance of this post for the protection of the people of the lower Rio Grande frontier can not be overestimated, and asking that the fort be maintained; and replying thereto to inform you that your request will receive due consideration.

Very respectfully,

H. C. CORBIN,  
Adjutant-General, Major-General, United States Army.

DALLAS, TEX., October 1, 1901.

The SECRETARY OF WAR, Washington, D. C.

SIR: I have just learned with astonishment that the War Department is contemplating the abandonment of Fort Brown, at the mouth of the Rio Grande, on the Mexican frontier of Texas. I do not understand how such a step could meet with a moment's favorable consideration by anyone familiar with the situation and necessities of that frontier, for there is no more important post in all the military establishment of the country from a strategic point of view. It is at the mouth of the principal river of our western border, commanding 1,700 miles of exposed frontier liable at any time to require prompt and effective military aid. The recent development of railroad facilities has rendered its support comparatively cheap, and there is every reason why it should be retained and strengthened instead of being abandoned. The importance of that post was demonstrated in the civil war of 1861-1865, and its great utility for international defense is appreciated to the fullest by Mexico, as that Government maintains its chief garrison just across the river at Matamoros. I wish to protest most vigorously against the discontinuance of Fort Brown as wholly unwarranted and in the nature of a public calamity to the people of Texas, if not of the entire Union.

In speaking thus emphatically, I do not do so from hearsay, for I am entirely familiar with the situation there, as I have traversed the region along the Rio Grande and at its mouth, in the vicinity of Brownsville, many times, and am thoroughly acquainted with the conditions and possibilities of that frontier.

The details and facts connected with the post will be presented to you by others more directly interested locally, but in the name of the people of the whole State I desire to enter my most earnest objection and protest to the proposed action of the Department in abandoning this critical and important military establishment.

I have the honor to be, with great respect,

Your obedient servant,

DUDLEY G. WOOTEN.

SENATE CHAMBER,  
Austin, Tex., October 3, 1901.

Hon. ELIHU ROOT,  
Secretary of War, Washington, D. C.

SIR: I have the honor to herewith transmit you copy of senate concurrent resolution No. 8, passed by the senate and house of representatives of the State of Texas October 1, 1901.

With continued high regards, I have the honor to remain, sir,

Yours, obediently,

W. B. O'QUINN,  
Secretary Senate, State of Texas.

It was thought of enough importance for the legislature of the State of Texas to pass a series of resolutions of the same character, which I will ask to have included as a part of my remarks.

#### Senate concurrent resolution 8.

Whereas it has come to the knowledge of the Texas legislature that the Federal Government contemplates the early abandonment of Fort Brown, located in the town of Brownsville, Tex.; and

Whereas the abandonment of said fort would mean the removal of one of the most important Federal posts on the Mexican frontier, it being at the mouth of the Rio Grande, and guarding the frontier for more than 140 miles; and

Whereas the town of Brownsville and the town of Matamoros are important to the commercial world, and especially the town of Brownsville, which receives a goodly amount of ocean traffic; and

Whereas the Mexican Government considers the town of Matamoros and country tributary thereto as of sufficient commercial, military strategic importance to justify said government in maintaining at the said town of Matamoros a strong military post: Therefore be it

Resolved by the senate of the State of Texas (the house of representatives concurring), That we do hereby protest against the contemplated action of the Federal Government, and most earnestly request of the President of the United States and the Secretary of War to continue said post and all other military posts on the Rio Grande.

*Be it further resolved*, That our Senators and Representatives in Congress and the governor of this State be, and they are hereby, requested to take up this matter with the proper officials of the Federal Government and urge the continuation of the military post at Fort Brown; and

*Resolved further*, That the secretary of the senate be, and he is hereby, instructed to immediately mail a copy of this resolution to the President of the United States, the Secretary of War, each of our Senators and Representatives in Congress, and to the governor of this State.

THE STATE OF TEXAS, SENATE CHAMBER.

I, W. B. O'Quinn, secretary of the senate of the State of Texas, do hereby certify that the foregoing is a true and correct copy of senate concurrent resolution No. 8, as passed by the senate and house of representatives on October 1, 1901.

W. B. O'QUINN,  
Secretary of the Senate.

I will also quote from a letter written by the governor of Texas:

EXECUTIVE OFFICE,  
Austin, Tex., October 4, 1901.

SIR: I beg to herewith inclose you a copy of a resolution adopted by the legislature of Texas in reference to the contemplated abandonment of Fort Brown, and to earnestly request that the post be maintained. It is quite important that troops be held at the mouth of the Rio Grande River, in order to insure peace and order on that portion of our frontier. In my judgment, its location is such as makes it of exceeding importance, and I earnestly trust that the Department will retain it at its present strength.

I have the honor to be, yours, very respectfully,

JOSEPH D. SAYERS,  
Governor of Texas.

The SECRETARY OF WAR,  
Washington, D. C.

HOUSE OF REPRESENTATIVES, UNITED STATES,  
Beaumont, Tex., November 20, 1901.

HON. SECRETARY OF WAR,  
Washington, D. C.

DEAR SIR: A resolution of the Texas legislature protesting against the abandonment of Fort Brown, near Brownsville, Tex., has been forwarded to you. I beg hereby to join in this protest, and respectfully request that this fort be continued.

Very respectfully,

S. B. COOPER,  
Member Congress, Texas.

HUNTSVILLE, TEX., October 5, 1901.

The SECRETARY OF WAR,  
Washington, D. C.

DEAR SIR: Our people are very much stirred up over the prospective abandonment of Fort Brown as a military post.

Permit me to earnestly urge upon you the propriety of continuing the protection of the Rio Grande section by maintaining this fort.

Very truly, yours,

THOS. H. BALL, M. C.

SHERMAN, TEX., October 4, 1901.

HON. ELIHU ROOT,  
Secretary of War, Washington, D. C.

SIR: It has been called to my attention that the War Department has been contemplating the abandonment of Fort Brown, at Brownsville, Tex.

As one of the Representatives from Texas, feeling a deep interest in the welfare of her people, and being well aware of the exposure and difficulties our people on the Mexican border have been subjected to, I most earnestly urge the increase of the frontier protection, the continuance of Fort Brown, and the location of adequate military forces along the Rio Grande border to insure protection of American interests. I would respectfully suggest that the maintenance of forts and military garrisons along the Rio Grande would not be attended with any extraordinary expense, and that no part of the frontier of the United States is more in need of a constant, watchful guard than that bordering on the Republic of Mexico. I trust that a consideration of this matter will result in an increase, and not in a decrease of this protection. Although located myself in the northern part of Texas, I feel that the interests of the southwestern portion of the State, which is developing so rapidly, should not be discouraged, nor should American interests be allowed to suffer for want of adequate protection.

Very respectfully,

C. B. RANDELL, M. C.,  
Fifth District of Texas.

GONZALES, October 7, 1901.

HON. ELIHU ROOT,  
Secretary of War, Washington, D. C.

MY DEAR SIR: My information is that your Department contemplates the abandonment of Fort Brown, at Brownsville, Tex., and I write you to earnestly protest against this action. I trust you will pardon me for saying that, in my judgment, a thorough investigation will convince you that such action will be both unwise and unjust. It is true that now our relations with Mexico are extremely friendly, on account of which we all rejoice; still, the situation is such that the maintenance of the fort will be an aid to continued security, and prevent any uprising of lawlessness along the border, which is so far from the seat of government of both countries.

From letters and telegrams I have received, it is evident that the people of the State in that section are much stirred up, and great dissatisfaction will result from the abandonment of the fort.

Doubtless my colleague, the Hon. Rud. Kleberg, who is now in Washington, will interview you in the matter. I heartily join him in his efforts in this matter.

Very respectfully, yours,

GEO. F. BURGESS.

HOUSE OF REPRESENTATIVES, UNITED STATES,  
Washington, D. C., October 26, 1901.

The SECRETARY OF WAR,  
War Department, Washington, D. C.

SIR: I beg to submit for your consideration the telegram I received some time ago, during your absence from the city, with reference to Fort Brown, at Brownsville, Tex., of which I spoke to you to-day.

The gentlemen signing the message are all prominent citizens, and their statements are perfectly reliable. I trust that Fort Brown and the posts along the Rio Grande generally may be maintained, as I believe they are necessary both as strategic points as well as necessary protection against marauding bands on the border between the United States and the Republic of Mexico.

Very respectfully,

RUDOLPH KLEBERG,  
Member of Congress.

I have quoted all these letters, or portions of them, not to show the character of the population of Brownsville but to show the character of the population that lives in the surrounding territory on both banks of the Rio Grande, both in Mexico and in the United States, and the opinion of the people of Texas themselves as to the necessity not only of protection from across the river, but from the lawless people who occupy this territory.

Mr. SMITH of Michigan. Mr. President, if it will not interrupt the Senator from Connecticut, I should like to ask him a question.

The PRESIDING OFFICER (Mr. SCOTT in the chair). Does the Senator from Connecticut yield to the Senator from Michigan?

Mr. BULKELEY. Certainly.

Mr. SMITH of Michigan. I should like to know whether it developed in the course of the hearing that the Mexicans came freely to Brownsville, the Mexican soldiers mingling with the American soldiers. Did that develop in the hearing?

Mr. BULKELEY. There is abundant testimony as to that. There was a ferry running in close proximity to Fort Brown, and it was a constant matter of visit from one place to the other by the soldiers.

Mr. SMITH of Michigan. Did it develop at all that the Mexicans came over at any time and rioted in the city of Brownsville?

Mr. BULKELEY. If the Senator will listen to the letter which I am going to read, I think he will be convinced that at one time the city of Brownsville had been in the hands of the lawless people who inhabit this territory for two or three days at a time, when it was almost impossible to secure help, and they even had to call on the Mexican Government to protect Brownsville.

Mr. SMITH of Michigan. I noticed in your statement a moment ago that the governor of Texas and other public men felt that this garrison should be strengthened. Of course that was not from fear of war, but probably from fear of rioting.

Mr. BULKELEY. It was merely for the protection of the people against raids from the other side and their own side of the river. I think the next letter will disclose the point.

Mr. FORAKER. "Marauding bands" is the expression.

Mr. SMITH of Michigan. "Marauding bands?"

Mr. FORAKER. That is the expression employed by one of the petitioners for the post to be continued—in order to protect the citizens of Brownsville against the marauding bands.

Mr. PILES. I should like to ask the Senator from Connecticut what is the color of the uniform of the Mexican soldiers.

Mr. BULKELEY. I do not think it is in the testimony, and I do not know that I can give it. But I shall not make any charge against the Mexican soldiers as marauders in this town. I have another theory which I will develop later. I do not think there is any occasion to lay this raid to Mexican soldiers.

Mr. HOPKINS. It is not material from your standpoint.

Mr. BULKELEY. I do not think there is any charge on the part of anybody against them, whatever their uniforms were. Some questions have been raised in regard to the character of the guns they used, and whether it was possible that the ammunition used in United States arms could be used in Mexican guns. But I do not recollect that any question was raised.

Mr. FORAKER rose.

Mr. BULKELEY. Possibly the Senator from Ohio can state.

Mr. FORAKER. My recollection is there is some testimony on that point; that the uniform of the Mexican soldiers is somewhat like ours, though not exactly the same shade of light color. There is a difference of shade. That is my recollection as to what the testimony is. As the Senator from Connecticut proceeds, I will try to find out.

Mr. BULKELEY. The letter I am about to read—

Mr. FORAKER. I want to join with the Senator in this connection in saying that no one means to suggest that this was done by Mexican soldiers. All I understand that the Senator is undertaking to do here is to show by these statements from Texas citizens as to why a garrison should be continued at Brownsville, that the people at that point needed the protection of a garrison as against the marauding bands which infested that locality. That was their own expression. That is the reason why I used it.

Mr. BULKELEY. I am about to read a letter from a member of the Texas legislature, written at that time. The question which was being considered by a board of Army officers was



the abandonment of undesirable and unnecessary Army posts, and Fort Brown was among the number. They were not confined to the frontier. They were all under consideration. It was a lengthy hearing. This [exhibiting] is only one volume of the report, and these letters that I am quoting from are all contained in this volume.

Mr. FORAKER. It was in 1901.

Mr. BULKELEY. 1901. I will read this letter, to which I invite the attention of Senators who have made inquiries of me.

Mr. HOPKINS. What is the date?

Mr. BULKELEY. December 2, 1901, written to the board of Army officers making the examination.

RIO GRANDE CITY, TEX.,  
December 2, 1901.

Lieut. Gen. NELSON A. MILES,  
Washington, D. C.

DEAR SIR:

Now, if a party of bandits, cattle thieves, or revolutionists cross from Mexico—and the river is no obstacle—the first thing they would do would be to cut the wire, and then they would have full sweep for a week or ten days, until word could be gotten to Laredo and troops sent on the long march here. We could doubtless oppose some resistance, especially to a small party, but remember that this frontier is inhabited almost entirely by Mexicans, few of whom, in the case of revolutionists coming over, would be inclined to take part with us, and some might even actively assist the revolutionists. Starr County (in which Fort Ringgold is situated) contains over 11,000 people, and of these less than 100 are Americans and negroes. The proportions are about the same in the adjoining counties of Zapata and Hidalgo, though in Cameron County (the site of Fort Brown) the proportion of Americans is slightly larger. All this was shown clearly at the time of the "Garza revolution" in 1891, when several troops of cavalry and companies of infantry of our Army, aided by State rangers and deputy sheriffs, found themselves for a long time unable to capture these few revolutionists on account of the nature of the country and the sympathy of many of the people with their cause. The history of Mexico shows that many of the revolutions that have distracted that country had their origin and found their strongest support on both sides of this frontier. I am informed that President Diaz himself started his revolution at, and was equipped from, Brownsville. If our neutrality laws and our obligations to a friendly nation are to be observed, troops must be maintained at one or two points between Laredo and the mouth of the Rio Grande, to cut off in the bud incipient revolutions starting up here.

I think that the time of the great cattle raids is over, but a period of disturbance, to be feared upon the death of Mexico's strong ruler, might cause their renewal. They were common on this frontier up to a few years ago. In 1859 the War Department withdrew all troops from the lower Rio Grande posts, and the consequence was the great Cortina raid from Mexico, when the robber general Cortina seized the city of Brownsville, killed the chief of police and a few other citizens, and held a carnival of robbery, outrage, and crime, until, at our urgent solicitation, the Mexican authorities of Matamoros sent over a company or two of troops to protect our people, and moved the rest of the regiment down to the river bank, ready to cross if needed. The War Department did what it could to remedy the original mistake, and hurried troops down (under command of Col. Robert E. Lee, if I remember aright), but the march was long, and they would not have arrived in time to prevent a general massacre but for the timely and illegal action of the Mexican authorities. That, sir, was a time—

And I wish Senators would pay particular attention, because this is from a Texas citizen—

That, sir, was a time not only of danger, but of abasement to our people, when they saw their town in possession of robbers, the American flag at the post filthily dishonored, their Government helpless to aid them, and the preservation of their lives and the honor of their women due only to the kindly but humiliating assistance of a friendly nation. Nor was it an easy task for our troops to overcome this band of robbers. The campaign lasted two or three months, and was conducted all up and down the river with varying fortunes, including one most inglorious defeat, before they were driven back crushed into Mexico. The archives of the War Department must contain a full account of this great raid, as well as of the many smaller ones, both before and since, that have plagued our people and demonstrated the usefulness of a standing army in time of peace.

As to riots and uprisings originating on this side of the river, they are no longer to be expected. Yet we can not forget the great riot here in 1888, when only the presence of the troops prevented a massacre. It will be remembered that on that occasion the wire was cut by the rioters (fortunately, just too late) and the town was in their hands, but Colonel Clendenning got out his Gatling guns, turned out his troops, and with a strong hand protected the refugees from the mob until the arrival of State Rangers and deputies from other counties restored order.

Mr. SMITH of Michigan. Who signed that letter?

Mr. BULKELEY. It was addressed to General Miles, and is signed by G. W. Seabury, representing the eighty-fifth legislative district.

But, apart from what the troops accomplish by their actions, their mere presence holds in check the lawless element always to be found on frontiers, and has been of the utmost value to this section and the country in general. Local protection is generally to be expected from local sources, but we stand here to protect not only ourselves, but the whole interior, from the lawlessness and crime of refugees from Mexican justice. As we suffer so much for the country, I think it not unreasonable for the country to aid us through United States troops and State Rangers.

I do not deny that the expense of these posts is great, but they are worth to the country at large vastly more than the amount expended on them. If there were no people here to protect, the enforcement of our laws and obligations of neutrality alone, not to speak of international complications, would imperatively demand their retention. \* \* \*

Very truly, yours,

G. W. SEABURY,  
Representative, Eighty-fifth Legislative District.

RIO GRANDE CITY, TEX., December 5, 1901.

President THEODORE ROOSEVELT,  
Washington, D. C.

HONORABLE SIR: I understand that the United States troops are to be removed from the Texas frontier posts, Forts Ringgold and Brown. I trust I may be pardoned if I say that in the opinion of all here it would be a most unwise and detrimental move for the peace and quiet of the frontier, keeping the resident population in a constant state of fear and unrest, besides retarding progress in the way of immigration, which is just now for the first time beginning to come this way. We are now having peace, quiet, and progress from the fact that the United States troops are present, and it is only the knowledge of that fact that keeps the turbulent element (mostly Mexicans) down, saving us from raids, robberies, and loss of life. I know whereof I write, having lived on the frontier for over fifty-two years, having knowledge of and have experienced much of it. I will call your attention to the Cortina raid in 1859, just after the removal of the troops. In 1888 the presence of the garrison, during the Garza-Seebre trouble, saved the lives and property of the Americans here, when if the Mexicans could have reached Seebre and Dillard, the two Americans connected with the affair, they would not have stayed their hands until every American in the place had been killed; but the two named above fled to the post for security, thus saving themselves and other American citizens. Also, during the Spanish-American war in 1898, we were threatened by raids ostensibly gotten up by Spaniards in Mexico, under the pretense of patriotism, but in reality for the purpose of plunder, only the presence of United States troops keeping them in abeyance.

Our position here is none too secure, conditions now being the same as ever. We hope and trust this step will be well considered in the interest of the law-abiding citizens and the Texas frontier.

AN AMERICAN CITIZEN.

Mr. PILES. I should like to inquire of the Senator whether these riots he speaks of were participated in by Mexican soldiers, according to the showing he has made?

Mr. BULKELEY. No. In that case the Mexican soldiers came across the river and helped to drive out the band of robbers who had Brownsville in their possession.

Mr. PILES. In the riots spoken of in this letter, were the participants confined altogether to members of robber bands?

Mr. BULKELEY. I think so; and cattle thieves.

Mr. PILES. Mexican cattle thieves?

Mr. NELSON. Revolutionists.

Mr. BULKELEY. Revolutionists who inhabited this territory.

Mr. PILES. As to any of the riots referred to by the Senator from Connecticut, I will ask if there is any showing that the participants shot up private houses in Brownsville, or whether it was confined to riots in the streets or even to raids on mercantile establishments and saloons. I wish to know whether any of the riots were carried so far as to make assaults on private residences?

Mr. BULKELEY. I have read all of the extracts that seemed to me pertinent. The town of Brownsville was for two or three days on one occasion in possession of these robbers, and that I thought should be distinctly understood. The robbers, not soldiers, took possession of the Government post and pulled down and trailed in the dirt the American flag; and it was not until the Mexican soldiers were appealed to to come and rescue the city from this lawless element that Mexican soldiers were sent over and finally drove them out before United States troops could reach the point.

I have quoted thus freely from these appeals from the people of the Texas frontier, in order to call attention to the character of the population and the dangers arising to the settled communities from the outlaws from both sides of the Rio Grande and contiguous to these communities. I regard these facts as important in view of previous raids into the settled towns as alluded to in the correspondence, and also in view of what we find more than once in the evidence before your committee, that on the night of the raid at Brownsville and shortly before the firing commenced, a party of horsemen, greater or less in number, were heard rapidly riding over the county road but a short distance outside the reservation and directly connecting with the Garrison road, or Fifteenth street, where the firing shortly after commenced.

I have in my remarks various affidavits and statements of the few persons and soldiers who were awake at the time the affray commenced. I will quote:

[S. Doc. No. 155, p. 512.]

Personally appeared before me, the undersigned authority, one William Harden, a private of Company B, Twenty-fifth Infantry, who, being duly sworn according to law, deposes and says, as follows:

"I was in the post hospital at Fort Brown, Tex., asleep on my bunk, on the night of August 13, 1906, when the shooting took place at that post. The shooting woke me up. I got up and came out on the front porch toward town with the hospital steward and the other patients. When I got out on the hospital porch I heard a bunch of mounted people galloping along the wire fence from east to west along the north boundary of the post. They were coming from the northeast corner of the wire fence. They opened up a fire near where the wire fence joins the wall, in rear of the first set of barracks.

That was in the neighborhood of this county road.

"They fired a few shots here, I don't know exactly how many, and then rode on along the wall to where most of the firing took place—in rear of B and C Company barracks. Firing ceased soon after call to arms sounded. Some six or seven bullets came over the hospital. We got

behind those big brick pillars. The bullets were lead bullets, because they had a coarse hum and did not sing like a steel bullet. It was too dark to see any persons. I knew nothing about any trouble.

"And further the deponent saith not.

"WILLIAM HARDEN,  
"Company B, Twenty-fifth Infantry."

Sworn to and subscribed before me, at Fort Reno, Okla., this 25th day of September, 1906.

SAMUEL P. LYON,  
Captain, Twenty-fifth Infantry, Summary Court.

[Testimony of William Harden, pp. 598-599.]

Q. That is the roadway inside of the reservation?—A. Yes, sir.  
Q. There is a roadway outside of the reservation?—A. Yes, sir; there is a roadway outside. I heard these two rapid shots that way, outside, eastward from the hospital, and I jumps up and runs out on the porch, and I meets Nolan and Sanborn, and when I got out on the porch I heard a crowd of horses galloping; when I got out they had got pretty near the corner and had gotten about the corner of that fence. They had got about where the barbed-wire fence connected with the wall, and they opened up some shots, and then they galloped on down to the main gate and opened up—I don't know how many shots—I guess a hundred or more shots were fired there. Sanborn, being a first-class private in charge, he made myself and Nolan get behind the pillars in the old hospital building there. That is an old Spanish building, a big old building, and we got behind those pillars to keep from getting hit with stray bullets coming from the southeast over the hospital. He made us get behind there to keep from getting hit. And these was lead bullets.

Q. How many did you hear?—A. I heard some seven or eight bullets go over the hospital.

Q. What else did you hear that you can tell us about?—A. After he made us get behind these brick abutments, the call to arms went, and about three or four minutes after the call to arms went firing ceased. And the last shot that was fired was fired away downtown. It was an old musket or shotgun of some kind, fired away downtown. We all had formed on the porch there, and had talked there and wondered about the shooting, and he made us patients go to bed.

Pages 601-602:

Q. I think we understand that. Now, you got out (without going over all this), and you heard these horsemen galloping by?—A. When I got out I heard these horses galloping just before the road turns to go down to the barracks.

Q. You have been in the service how long?—A. Since 1905, the last time.

Q. How long before that?—A. I went out on a short-order furlough at Fort Logan. I went out in 1903 and I was out until 1905, when I reenlisted.

Q. From the sound of these men galloping by, how many men were there?—A. As high as I can get at it from my knowledge, I guess there was from twelve to fifteen. You know this—if I may ask the Senator a question.

Q. How do you know how many horsemen there were?—A. I don't know. I said from my knowledge it might have been twelve or fifteen horses.

Q. They were making no noise, of course?—A. They were making a lot of noise.

Q. They were not trying to keep it secret, at all? Are you certain they were making a noise?—A. They were galloping. I heard their hoofs against the ground, of course.

Q. Were the riders making any noise?—A. No, sir; the riders were not making any noise; only I heard their galloping.

Q. There was no hollering?—A. No, sir; no hollering.

Q. No shouting?—A. What is that?

Q. No shouting by the men on horseback?—A. No, sir; the men couldn't shout on horseback unless they were hollering.

Q. When the men were galloping, the firing was right toward the hospital?—A. Yes; but wait a minute.

Q. Yes; I will.—A. When the first shot was fired the horses galloped around, and when they got to the joining of the wall they opened up a fire again, and then when they got down to the gate then all this firing commenced. That is when the man made me and the other men get down behind the brick abutments.

[Testimony of Samuel Wheeler, pp. 642-643-645.]

Q. What was the conversation you had with General Garlington?—A. He asked me about the knowledge I had of this shooting.

Q. You told him?—A. Yes, sir; I told him, and when he explained it to me, then I went on to tell him that I thought that the people of Brownsville did this shooting, myself, and he said "Never mind about that; just answer such questions as are asked of you." So I quit. I was a soldier, and subject to orders, and didn't wish to give the General any insubordination; and so he said that would do.

Q. He asked you to tell all you knew of this shooting?—A. No, sir; he did not ask me to tell all I knew about the shooting.

Q. Did you understand that he wanted you to tell all you knew about it?—A. I might have.

Q. Were you ready to tell all you knew about it?—A. I have tried to always.

Q. Were you ready to tell all you knew if he had asked you to tell all you knew?—A. Yes, sir.

Q. Did he ask you to tell him about hearing those horses galloping by?—A. I hadn't gotten to that point.

Q. He never refused to let you tell him about that?—A. I was telling him about the shooting. I didn't know whether the horses had anything to do with the shooting; only I knew I heard some horses going very rapidly.

Q. Was that a horse or some horses?—A. I said "horses" in the first beginning, I think, sir. It wasn't one horse, I am sure.

Q. How many horses?

Senator FORAKER. He said three or four horses.

Senator WARNER. I did not hear the three or four. I did not hear the witness say that.

By Senator WARNER:

Q. Just approximate, as near as you can, how many horses you heard.—A. Well, sir, it seemed to me it might have been about four horses—three or four horses. I didn't see them; I only heard them.

Q. Then when you heard those horsemen going that way, the fusillade was over?—A. No, sir; that was during the fusillade, during the shooting, sir. That was right along during the shooting. It

seemed as though he must have had an awful gun. I could hear the reports from it, it seemed like a mile, down through the town.

Q. But confining it to this other point, now, as to those horses galloping, when was that, in reference to the fusillade you heard?—A. Right along the latter part of it.

Q. So that if there was anyone upon those horses, they could have had nothing to do with the fusillade down in the direction of Elizabeth street?—A. They could have had a good deal to do with it. It might have been another party down there. They could have connected with it.

Q. Yes; another body. But that body you heard up there going out Adams street?—A. I didn't say they were going out Adams street. I don't know what street they were going out.

Q. Well, whether one or more; did you think at the time that that had nothing to do with the shooting, and therefore did not make the statement?—A. That the horses passing by at that time—

Q. Yes; had nothing to do with the shooting?—A. Had nothing to do with the shooting.

Q. No, sir?—A. No, sir; I don't believe any horses would travel with that force that those horses were traveling with, unless something was forcing them along. It is not usual for horses to travel with the force that these horses were traveling with without somebody is driving them. The horses seemed to be traveling with great speed.

Q. And you thought those horses were mounted, then?—A. I thought they must have been mounted by some one, and the ones they were mounted by must have been connected with this shooting.

It was also in evidence before your committee (see testimony of custom officers and others) of the desperate encounters with smugglers and criminals; that this adjacent territory was infested with bandits and robbers, as well as deserters from the Army. One customs officer—and he is the one that committed the assault upon the soldier Newton—testified that during his term of service he had made more than 600 arrests. With this admitted criminal population constantly under the surveillance of the officers of the law, would it be, Mr. President, a wild stretch of one's imagination to locate, with reason, the so-called "conspiracy" to raid the city of Brownsville, and in connection with the lawless element located there to seek vengeance on the officers of the law, both local and national, who had so often brought them within the clutches of justice? And if, in their murderous raids against officials, they should disregard, endanger, or take the lives of unoffending citizens it would not be an unnatural conclusion.

Brownsville itself is essentially a town of Mexican characteristics; its population is largely of Mexicans or of Mexican or Spanish descent, and the predominating language used by all is the Spanish. Its police force is composed of Mexicans, who speak the English language indifferently or not at all. Its streets are poorly lighted, as was stated by the President in one of his messages, from which I quote:

The streets are poorly lighted, and the night was very dark.

This statement is fully corroborated by Major Penrose and every one of his officers, who repeatedly testified—and their testimony is uncontradicted—that it was impossible in the open grounds of the post to distinguish or identify their own men, on account of the darkness, at a greater distance than from 5 to 10 feet.

On the map furnished by the Government as an exhibit and appended to Senate document 155 (the little map, which Senators will find on their desks, is a reduction of this map) the lights of the city are clearly indicated. I shall be glad to have Senators examine it, if they choose, for their own information.

Reference to this map furnished by the Government as an exhibit (S. Doc. No. 166), on which the street lamps are indicated, shows conclusively that on the route covered by the raid there were but four city lamps, including Elizabeth street; and on Garrison road, or Fifteenth street, extending the whole front of the reservation, not a single lamp is located, and the only light this whole distance on this road was a single lamp at the post gate used by pedestrians. The Senator from Missouri [Mr. WARNER] is mistaken when he locates two lamps over the main gate, as examination of photo Exhibit No. 5 clearly shows—as well as the testimony of Major Penrose on this point—that on Cowen alley, the location of the principal part of the shooting, there is not a single lamp, public or private, its entire length from Fifteenth street to Twelfth, and on Thirteenth street—the route taken by the raiders—there is a lamp located at the corner of Elizabeth, also one at the corner of Washington street, 300 feet apart.

Hearings, volume 3, pages 3021-3022:

By Senator BULKELEY:

Q. Where was the light at the gate?—A. Right on one of the posts, the post on the east side of the gate. There is a small gate. There is a large gate to the wagon road, and there is a small gate to the footpath, and it was on the post, or I think there was an iron rod that went over the gate, and it was suspended from that. I think that shows in one of the pictures.

Q. There was only one lamp there?—A. Only one lamp.

Q. And that was over the pedestrian gate?—A. Yes, sir.

Senator BULKELEY. Not three lights.



By Senator FORAKER:

Q. I show you the picture in the Purdy report.—A. No. 5.  
Q. Does that correctly represent the lamp over the little gate?—A. Yes, sir; I think that lamp is right there. There is no lamp beyond that at all.

Q. There were no lamps that night over the big gatepost?—A. No, sir; there was no light over the big post. I don't think they are fixed for lights at all.

On Cowen alley, where the principal part of the shooting took place, there is not a single lamp, public or private, its entire length—from Fifteenth street to Twelfth—and on Thirteenth street, the route taken by the raiders, there is a lamp at the corner of Elizabeth; also one at the corner of Washington street. The lamps are 300 feet apart, and they are kerosene lamps of 8 candlepower only, as testified to by Lieutenant Leckie, who was sent to Brownsville for the purpose of an investigation of all the surroundings. Among other things, he investigated the location and the character of the lamps and their candlepower. All Senators know for themselves the amount of light furnished by an 8-candlepower kerosene lamp on a public street well shaded with trees.

Q. It has been suggested here by a question, I don't know whether you know or not, that the fort has been dismantled since, that it had been dismantled when these pictures were taken, and perhaps the lamps that had been over the post at the big gate had been removed. Have you a recollection whether there were any lamps over the post?—A. I think not, sir.

Q. Just the one lamp?—A. I think there was just that one lamp lighted.

Cowen alley is midway between these two lamps and about 120 feet from either. It is testified to by an Army officer that these lights are of but limited candlepower and that their reflection radius does not extend beyond a distance of 20 feet, which, taken in connection with the fact (see testimony of Mayor Combe) that these streets are fairly well covered with shade trees, would indicate that these few lights, located as I have indicated, would furnish little, if any, help in the identification of the raiders by people aroused from their slumbers at midnight looking out into the oblivion of midnight darkness. Major Blocksom, page 427, Senate Document No. 155, said:

None of the individual raiders were recognized. Streets are poorly lighted, and it was a dark night. Those who saw them were busy trying to keep out of sight themselves.

These quotations, with the map exhibits of the street lighting, I believe to be unquestionable, and there is little, if any, conflict of testimony as to the darkness of the night, so that it seems unnecessary to quote further from the testimony to establish these points.

The soldiers of the Twenty-fifth Infantry were not welcome as a garrison for Fort Brown. Soon after the order was issued for their location at that post a remonstrance against such action was forwarded to the War Department. (See S. Doc. No. 155, p. 301.)

[Extract from the Annual Report of the Secretary of War for the year 1906.]

#### DISCIPLINE—THE BROWNSVILLE AFFRAY.

I am very sorry to record a most serious breach of discipline and the commission of a heinous crime by certain members of a battalion of the Twenty-fifth Infantry, Companies B, C, and D, on the night of the 13th and the morning of the 14th of August, at Fort Brown, Brownsville, Tex.

In June last objection was made to the stationing of this battalion at Fort Brown by a resident of Brownsville in a letter transmitted through Senator CULBERSON, to which the following answer was made:

It is proper to state at this point that the citizen of Brownsville who wrote this letter which was forwarded to the War Department and who had testified before your committee criticised one of the citizens of Brownsville in a public speech in the city, and the next morning he was ruthlessly shot on the streets of Brownsville by the son of the witness, showing that there is not an entire regard even in the city of Brownsville for the lives of their own white citizens.

WAR DEPARTMENT,  
Washington, June 4, 1906.

Hon. C. A. CULBERSON,  
United States Senate, Washington, D. C.

MY DEAR SENATOR: I have the honor to acknowledge receipt of your note of June 1, transmitting a letter from Mr. Sam P. Wreford, of Brownsville, Tex., stating certain objections to the stationing of negro troops at Fort Brown, and in reply to say that the matter of possible objections of this character was very carefully considered before the order was made, and I regret that I can not see my way clear to rescind it.

The fact is that a certain amount of race prejudice between white and black seems to have become almost universal throughout the country, and no matter where colored troops are sent there are always some who make objections to their coming. It is a fact, however, as shown by our records, that colored troops are quite as well disciplined and behaved as the average of other troops, and it does not seem logical to anticipate any greater trouble from them than from the rest. Friction occasionally arises with intemperate soldiers wherever they are stationed, but the records of the Army also tend to show that white soldiers average a greater degree of intemperance than colored ones. It has sometimes happened that communities which objected to the coming of colored soldiers have, on account of their good conduct, entirely changed their view and commended their good behavior to the War Department.

A change of station was necessary for these colored troops, and one-third of the regiment (a battalion) had already been sent to Fort Bliss, Tex., more than six months ago. Since that time no complaint concerning their conduct has reached the War Department, so far as I know. It was also necessary to send the entire regiment to the same locality, and to have sent it anywhere else would have involved two moves for the battalion now at Fort Bliss within about six months. This would have been an injustice to the troops concerned, and would, in addition, have entailed considerable extra expense upon the Government.

Trusting this explanation may be satisfactory to your constituents, I remain,

Very truly, yours,

WM. H. TAFT,  
Secretary of War.

The battalion was accordingly sent to Fort Brown in command of Maj. C. W. Penrose, and arrived there July 28, 1906. Soon after its arrival unfortunate differences arose between the enlisted men and some townspeople. As is usual in such cases, there was contradictory evidence as to the cause for the troubles, though they were doubtless due primarily to the resentment of certain of the townspeople at the proximity of a negro battalion. The instances of friction were numerous and notorious enough to be the cause of much discussion in the barrack rooms of the three companies. The feeling of the enlisted men was also aroused by a discrimination insisted on in most of the saloons of the town, in which separate bars were provided for them. No serious injury was done to any of the colored soldiers, although one of them was knocked down by a Government official named Tate with a clubbed revolver for jostling his wife, as he charged, and another was pushed off a gang plank by a customs inspector into the mud of the Rio Grande, because drunk and disorderly, as it was claimed.

Under date of August 17, the following telegram was addressed to the Secretary of War (S. Doc. No. 155, p. 23):

[Telegram.]

DALLAS, TEX., August 17, 1906.

SECRETARY OF WAR, Washington D. C.:

Some time ago I called your attention to the danger of locating negro troops in Texas, especially at Brownsville. The recent outrageous conduct of such troops there fully justifies the fact of the people of that locality. Can not these troops be removed at once?

C. A. CULBERSON.

Lieut. Harry S. Grier (S. Doc. No. 155, pp. 115-116):

Q. Did you hear any of the people of Brownsville make any remarks about the colored soldiers?—A. I did.

Q. What did they say?—A. The very first day on our arrival in Brownsville I registered at the Miller Hotel, and in conversation with the clerk in regard to colored troops being sent to Texas he stated that the people were much opposed to their coming, and they mustn't take any undue liberties or there would be trouble.

Q. Do you know his name?—A. I do not, except he is night clerk in the Miller Hotel. On several occasions I have heard people explaining, not in a resentful way, what was customary for the colored people to do in that part of Texas, especially about drinking in bar with white men.

Q. Did you ever see any soldiers mistreated in Brownsville?—A. No, sir; I did not.

Major Blocksom reports, August 20, 1906 (S. Doc. No. 155, p. 71):

BROWNSVILLE, TEX.,  
August 20, 1906.

THE MILITARY SECRETARY, UNITED STATES ARMY,  
Washington, D. C.:

Causes of disturbance are racial. People did not desire colored troops here, and showed they thought them inferior socially by certain slights and denial of privileges at public bars, etc.

Page 65, under date of August 29:

I met many sterling people in Brownsville. The majority of good business men recognize the proper ethics of the situation, but many others of a somewhat lower class think the colored soldier should be treated like the negro laborer of the South. It must be confessed the colored soldier is much more aggressive in his attitude on the social equality question than he used to be.

Very respectfully,

A. P. BLOCKSOM,  
Major, Inspector-General.

McCaskey, brigadier-general, commanding Southwestern Division and Department of Texas, August 17, 1906 (S. Doc. No. 155, p. 24):

[Telegram.]

CAMP MABRY, Austin, Tex., August 17, 1906.

MILITARY SECRETARY,  
War Department, Washington, D. C.:

Unsatisfactory conditions at Fort Brown and Brownsville continue. Citizens appeal to State officials, on account of abject fear of women and children, to have present garrison removed. Commanding officer, Fort Brown, of even date, wires situation grave. One-third garrison guarding other two-thirds and preventing ingress to or egress from post. Remarkable and unmilitary situation. Citizens of Brownsville entertain race hatred to an extreme degree, making it necessary to divert competitors returning from Fort Sill. The provocation given soldiers not taken into account by civilians. Recommend temporary abandonment of Fort Brown as a military station and that troops now there be sent to Fort Reno, Okla.

McCASKEY,  
Brigadier-General, Commanding  
Southwestern Division and Department of Texas.

Major Blocksom again reports, August 29 (Senate Doc. No. 155, p. 61):

1. The soldiers heard they were not to go to Camp Mabry because Texas troops had threatened to use ball cartridges against them in maneuvers. They knew Colonel Hoyt made a request that the Twenty-fifth be not sent to Texas.

2. The people did not desire the colored troops and thought they should not be sent here. I learned this before the rumored abandonment of Brown from prominent citizens, members of the committee of safety, etc. I think requests were sent to Senators, Congressmen, etc., to use their influence in the matter, but am not positive. If a fact, it is probably known at the War Department.

3. Soldiers of the Twenty-fifth were not allowed to drink with white people at the principal bars in town, though in some cases saloon keepers put up a separate bar for their use, this having an opposite effect to that intended. The bartender was killed in such a saloon.

Second Lieut. E. P. Thompson, Twenty-sixth Infantry, makes the following affidavit (S. Doc. No. 155, p. 514):

SAN ANTONIO, COUNTY OF BEXAR, *The State of Texas*, ss:

Personally appeared before me, the undersigned authority, one Edwin P. Thompson, who, being sworn, deposes and says:

That he is a second lieutenant in the Army of the United States; that in such capacity he served at Fort Brown, Brownsville, Cameron County, State of Texas, from September 4, 1903, until August 13, 1906; that when it was known that a battalion of the Twenty-fifth United States Infantry was to garrison the post many derogatory remarks were made before its arrival by some citizens in reference to the colored soldiers in words as follows, or words to the like effect: "We don't want the damn niggers here;" "Niggers will always cause trouble;" "To hell with the colored soldiers; we want white men," and that he is unable to fix any one of such remarks upon any one citizen owing to the frequency with which like remarks were made and the period of time covered; that various minor clashes occurred between the individual citizens of the town and the soldiers; that one Teofilo Crixell, a saloonkeeper of Brownsville, Tex., told him that a row had occurred in the "White Elephant" Saloon, owned by one Vicente Crixell, in words to this effect, to wit: That one Bates, a Federal officer, was at the bar drinking when a colored soldier entered and asked for a drink; that the said Bates then turned to the soldier and said no nigger could drink at the same bar with him, and that upon the soldier remarking that he was as good as any white man said Bates drew his revolver and hit the soldier over the head; said Bates then going to the police headquarters and offering to pay his own fine.

Further deponent saith not.

E. P. THOMPSON,

Second Lieutenant, Twenty-sixth Infantry.

Sworn to and subscribed before me this 27th day of September, 1906.

L. M. PURCELL,

Second Lieutenant, Twenty-sixth Infantry, Judge-Advocate.

Testimony of this character might be multiplied from both officers and men, but I will not weary the Senate with further extracts from the record testimony. These few indicate the feeling on the part of at least many of the civilians of Brownsville and their opposition to the location of colored troops at Fort Brown.

#### IDENTIFICATION OF THE RAIDERS.

This involves one of the important questions of this investigation. The so-called "identification" of eyewitnesses is entitled to most careful consideration. I am satisfied from listening to and reviewing the testimony, taking into consideration the character of the night, the midnight hour at which the raid occurred, the dimly lighted and shaded streets on the greater part of the route followed by the raiders, and streets and alley not lighted at all, that such identifications as are testified to by numerous witnesses were absolutely impossible. I would not accuse all of these witnesses of untruthfulness. They were impressed with the fact that the town was being raided, and that whatever forms they saw in the darkness was necessarily a soldier—that consequently they must be negro soldiers, as they were the only ones located in that vicinity.

An additional fact adding another possible difficulty in distinguishing the character or identity of the raiders may be found in the testimony—uncontradicted—that the old clothing or uniforms of the troops were thrown away and appropriated by the Mexican scavengers, and that they were constantly seen upon the streets clad in these discarded uniforms. (See testimony of Sergeant Frazier, p. 62-93, vol. 1, Hearings; also affidavits of numbers of men to the same effect, S. Doc. 155, p. 232, 233):

Mr. SCOTT. Will the Senator from Connecticut allow me?

Mr. BULKELEY. Certainly.

Mr. SCOTT. If I remember rightly, the Senator from Idaho [Mr. BORAH] the other day said it was impossible for these uniforms to be worn unless people had stolen them. Was it not in evidence that the Twenty-sixth Regiment threw a great many of their khaki uniforms and old hats and caps away?

Mr. BULKELEY. Yes; I will come to that in a moment.

Mr. SCOTT. I thought it was a rather peculiar statement at the time the Senator from Idaho made it.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER (Mr. DICK in the chair). Does the Senator from Connecticut yield to the Senator from Idaho?

Mr. BULKELEY. Certainly.

Mr. BORAH. I think if the Senator from West Virginia will look over my remarks, he will find that I did not make the statement in the language that he quotes. But if it should occur that the uniforms were secured, I should like to have the Senator who is on the floor explain how these marauders from the outside got hold of them.

Mr. BULKELEY. I think I can do that to the Senator's entire satisfaction in a few moments.

Mr. SCOTT. There is no question about it.

Mr. BULKELEY. I will for the moment say they could have been readily secured from these discarded uniforms, both from the refuse left by the Twenty-sixth and from the discarded uniforms of the Twenty-fifth. I will present evidence showing that when they left Fort Brown the discarded uniforms were dumped upon the heap and taken by these scavengers, Mexican boys, and citizens.

Mr. SCOTT. And their hats and caps also.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER. Does the Senator from Connecticut yield further to the Senator from Idaho?

Mr. BULKELEY. Certainly.

Mr. BORAH. Just for a question. Do I understand the Senator's contention to be that this raid was done by citizens of Brownsville, or by people who came into the town that night from the outside?

Mr. BULKELEY. I stated early in my remarks, I think quite clearly, that in my belief the raiding was done by the lawless element from outside of Brownsville, aided by the lawless element located therein.

Mr. BORAH. The contention, then, as I understand it, is that there were some people who came into Brownsville that night on horseback or otherwise and participated?

Mr. BULKELEY. The evidence so shows.

Mr. BORAH. And that the people within the town joined with those from the outside?

Mr. SCOTT. Certain people.

Mr. BULKELEY. I stated my theory that the lawless element—not the peaceful, well-behaved citizens of Brownsville, but the lawless element that resided within and without the city, smugglers and others, who were constantly under the surveillance and within the clutches of the officers of the law—connived at this conspiracy which I am trying to show. Here is an affidavit with thirty-six names attached thereto:

AFFIDAVIT T.—General affidavit—relative to citizens wearing old caps, etc.

TERRITORY OF OKLAHOMA, County of Canadian, ss:

Personally appeared before me the undersigned, duly authorized to administer oaths in and for the county and Territory aforesaid, the following-named persons, who certify that they were members of the Twenty-fifth United States Infantry, stationed at Fort Brown, Tex.:

Affiants allege that soon after arrival at said fort they discarded all their old uniform, such as caps and uniform, and threw the same out in the rear of the garrison, and that many boys and men soon thereafter were seen by us wearing the said uniform that had been discarded, and that it was a common sight to see the same, as herein alleged.

Affiants further allege that during their stay at Fort Brown they did not wear any caps, but all wore hats.

Thomas J. Green.

Temple Thornton, corporal Company D.

John R. Jones.

Barney Harris.

Henry W. Brown.

James Newton.

Winter Washington.

Alonzo Haley.

Joseph Shank.

Zachariah Sparks.

George W. Hall.

Joseph Jones.

Charles Dade.

Strowder Darnell.

Henry Borse.

William Van Houk.

Robert (his x mark) Williams (mark made

by reason of afflicted right hand).

Edward Jordan.

Jacob Frazer, first sergeant Company D.

Len Reeves.

John A. Jackson.

Elmer Peters.

Robert L. Rogan.

Dorsie Willis.

Elias Gant.

Albert Holand.

Richard Crooke.

George W. Newton.

John Slow.

Jerry E. Reeves, sergeant, Company D,

Twenty-fifth Infantry.

Henry Robinson.

Walter Johnson.

James H. Ballard.

Luther T. Thornton, sergeant, Company D,

Twenty-fifth Infantry.

William R. Jones.

Samuel Wheeler.

Sergt. Mingo Sanders—

Mr. SMITH of Michigan. Who signed this document?

Mr. BULKELEY. It is signed by about forty or fifty soldiers of the Twenty-fifth Infantry.

Mr. FORAKER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Ohio?



Mr. BULKELEY. Certainly.

Mr. FORAKER. There is no contradiction of the testimony on that point. The citizens of Brownsville, one and all, who testified on that point, said that the khaki clothing was commonly worn by Mexicans and by all kinds and classes of citizens; that you could go into any store and buy a suit of khaki made up, which in the nighttime 5 feet away from you could not be distinguished from the uniform which the soldiers wore. The policemen wore that kind of uniform.

Mr. BULKELEY. I think the testimony which I am about to read will fully justify the remarks which the Senator from Ohio [Mr. FORAKER] has so kindly made.

Sergt. Mingo Sanders was a soldier of twenty-five or thirty years' experience in the Army. All of his officers at that time, and all the officers that had been connected with the regiment during his long service, testified as to his standing as a soldier and as a man.

On page 339, volume 1, Hearings, Sergt. Mingo Sanders testifies:

Q. I want to ask you a question on another line. Do you know what kind of uniform the policemen of Brownsville wear?—A. They wore a khaki uniform.

Q. The same material as that of the uniforms of the soldiers?—A. Yes, sir; they were the same material, almost.

Q. Are they Americans or are they Mexicans, those policemen?—A. They are Mexicans.

Q. If you know?—A. They are Mexicans, so far as I seen; Mexican police.

On page 362, Q. M. Sergt. Thomas J. Green testifies:

Q. Did you, while you were at Brownsville, see any of the policemen of Brownsville?—A. Yes, sir.

Q. What kind of uniform do they wear?—A. Khaki.

Q. Similar to what the soldiers wear?—A. Yes, sir.

Q. What kind of hat did they have on?—A. The campaign hat.

Q. The campaign hat?—A. Yes, sir; only they had a gilded cord around it.

By Senator FORAKER:

Q. Did any of the citizens there wear khaki clothing?—A. Yes, sir.

By Senator TALIAFERRO:

Q. How many policemen did you see?—A. I couldn't tell you, sir.

Q. Just approximately.—A. I have seen a good many of them, from time to time.

Q. And you remember distinctly that they wore khaki uniforms?—A. The policemen—that is, those men that were told to me to be policemen—had khaki uniforms.

Q. And hats like yours, except with a different kind of cord?—A. Yes, sir.

By Senator FORAKER:

Q. I will ask if you saw Mexicans running around there with khaki clothing on, or not?—A. Yes, sir.

Q. Was that an unusual thing, to see citizens dressed in khaki?—A. Yes, sir; lots of citizens wore khaki.

Q. It was not unusual to see it?—A. No, sir.

By Senator OVERMAN:

Q. How many policemen were there in that town, do you know?—A. No, sir; I never was in the town ever three or four times the whole time I was down there.

Q. How many policemen did you see?—A. I have answered that question.

Q. You say every policeman you saw had on khaki. How many did you see?—A. I don't know. Every policeman I saw had on khaki uniform and a campaign hat.

Q. Was that the same man that you saw each time?—A. No, sir.

Q. How many did you see?—A. I couldn't say.

Q. Can't you give me an estimate?—A. No, sir; it would be just as impossible to tell you how many policemen there are in Brownsville as how many there are here in Washington.

To impeach the testimony of many if not the greater number of these eyewitnesses it only seems necessary to quote from the official utterances. Under date of January 12, 1907, the Secretary of War writes to the President (S. Doc. No. 155, part 2, p. 17):

There is a conflict as to the circumstances growing out of the evidence of the witnesses, which is entirely natural in respect to transactions during the daytime, and still more natural in respect to the transactions and the direction of sounds during the night, and there are some things about the evidence of McDonald, Mrs. Odin, and of Preciado, who testify with such detail as to seeing the negro soldiers—the one at garrison wall, the next at the alley of Miller's Hotel, and the third at the Tillman saloon—which, in view of previous statements, shake some of the weight of what they say. Mrs. Odin's statements bear evidence of being affected by conversations with her husband, and there is a somewhat suspicious agreement as to exact details between their two statements.

Again, the Secretary of War addressed a communication to the President in sending an additional affidavit in the case of Preciado, who, if anyone's testimony was good for anything, was in the best position of anybody that night to see and identify the soldiers if the raiders were soldiers. I call your attention to the statement of the Secretary of War.

Senate Document No. 155, part 2, page 19:

Letter of the Secretary of War to the President relative to additional testimony in the Brownsville case.

WAR DEPARTMENT,  
Washington, January 14, 1907.

MY DEAR MR. PRESIDENT: In my letter transmitting the additional evidence in the Brownsville case, I had occasion to comment on the

circumstances which impaired the weight to be given to the evidence of Paulino Preciado, in which he stated that he saw the four or five men who killed the barkeeper, and recognized them as negro soldiers, admitting on examination that he had not made such a statement before, explaining it by saying that he was not asked. Since sending you the evidence and my letter of transmittal, I have come across what purports to be, and what I believe to be, a copy of a report of Preciado's evidence before the grand jury, which expressly contradicts and impeaches his evidence upon this point. I ask that this be forwarded to the Senate with your message and the other papers.

Very respectfully,

WM. H. TAFT,  
Secretary of War.

The President.

GRAND JURY ROOM, September 10, 1906.

Paulino Preciado, being duly sworn, deposes and says:

"I live in Brownsville, Tex.; on the night of the shooting I was in the Ruby Saloon, belonging to Mr. Tillman, near midnight. We, myself, Antonio Torres, Nicolas Sanchez Alanis, and Mr. Tillman, were sitting in the yard, when we heard some shots. Tillman got up at once and left us. We remained with the bartender, Frank Natus; the latter closed the doors toward the street; in the meantime the shooting became heavier. Then the bartender went to close the door toward the alley. He went about 20 feet toward the door, when a volley was fired. Natus exclaimed, 'Ay Dios,' and fell down; I saw him because I was looking in that direction when the shots were fired. I saw I was in danger and went to one side. I could not see anybody in the alley, as it was dark out there and I was in the light. I heard no word spoken. I hid in a corner where a brick wall protected me until the shooting was over, then I went to close the alley gate. While I was in the corner I received a slight flesh wound on the left hand, and another passed through my coat and vest, breaking my spectacles, which I carried in the left breast pocket of my coat, but did not hurt me. I think I received the shots at the time Frank Natus fell, but did not notice it at the time. When the shooting was over I went and opened the front door, and asked the crowd of people who were there if there was an officer amongst them. Mr. Victoriano Fernandez came forward, and I told him what had happened.

"PAULINO S. PRECIADO."

Sworn to and subscribed before me, this 10th day of September, 1906.

WM. VOLZ,  
Foreman Grand Jury.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Ohio?

Mr. BULKELEY. I do.

Mr. FORAKER. If the Senator will allow me, I should like to interject there, for the benefit of Senators who are not familiar with this record, that this man Preciado, whom the Secretary of War thus disposes of, is the only man who, according to his testimony, claimed to have the benefit of artificial light to distinguish the men who were doing the firing.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Texas?

Mr. BULKELEY. I do.

Mr. CULBERSON. I will ask the Senator from Ohio if the gentleman who sat in the window of the hotel, the Miller House, did not declare that he saw them by the light in the street?

Mr. FORAKER. It was shown by the testimony that there was no light whatever in the street at that point.

Mr. CULBERSON. The Senator does not, I think, directly answer the question. Did not the gentleman—I have forgotten his name just for the moment—

Mr. BULKELEY. Odin.

Mr. CULBERSON. Who was in the Miller House, declare that he saw the soldiers by the light in the street?

Mr. FORAKER. I do not know the witness to whom the Senator refers, but I do know that the testimony shows that there was no light by which anyone could have seen any soldier in the street at the point where it was claimed he saw them.

Mr. CULBERSON. My recollection is—

Mr. FORAKER. One moment, if the Senator will allow me. One man claimed that he looked half a square away from the mouth of the alley, a distance of 160 feet, and recognized that a man was a soldier as he turned around the corner, because he went under a lamp, the light of which fell on his face as the man looked back. The testimony is conclusive that nobody turned that corner at that time in any such way. That is the testimony of a citizen who lived immediately opposite who was looking out of the window at the time and could have seen if anybody had turned the corner.

Mr. CULBERSON. My recollection is refreshed by Senators around me that the name of this witness is Odin, who testified that he witnessed this from the window of the Miller Hotel.

Mr. FORAKER. The testimony of Odin was that he looked out and saw a soldier fire up toward the window, that he recognized him by the flash of the gun, and saw that he had freckles on his face. [Laughter.] All that will receive due consideration at the proper time.

Mr. CULBERSON. Yes, Mr. President. My inquiry of the Senator from Ohio, who stated that a certain man was the only

witness who testified that he saw by the aid of artificial light, was whether or not this man Odin did not testify that he saw—

Mr. FORAKER. If I said he was the only man who testified that he had the benefit of artificial light, I want to correct it. I did not mean that. I mean he testified that he had had aid of artificial light, and that he is the only witness who, according to the testimony, could possibly have had the benefit of artificial light; and he shows by his own testimony that he did not see anything—I mean when giving testimony before the grand jury.

Mr. CULBERSON. My purpose was simply to have the Senator correct his statement—

Mr. FORAKER. Yes.

Mr. CULBERSON. That the only witness was the one named by him who did not have the aid of artificial light.

Mr. FORAKER. Still I do not understand that Mr. Odin claims that he had the benefit of artificial light except by the flash of a gun; and we are able to show by the testimony of officers of the Army, who made experiments, that it is utterly impossible to recognize anything by the flash of one of these modern rifles.

Mr. FRAZIER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Tennessee?

Mr. BULKELEY. Certainly.

Mr. FRAZIER. I want to ask the Senator from Ohio, with the permission of the Senator from Connecticut, a question. I understood the Senator from Ohio to say that the witness to whom he refers is the only witness who testified that he had the advantage of artificial light to enable him to distinguish these raiders as soldiers. Do I understand the Senator to state that?

Mr. FORAKER. I think I probably did, from what the Senator from Texas [Mr. CULBERSON] has said; but I qualified that a moment ago, however, as the Senator from Tennessee must have heard. I think that this man is the only man who claims that he saw by the aid of artificial light, who was in a position to have had such help. Now, will the Senator give me the name of any other witness who so testified? We had so many of them that I can not recall all of them.

Mr. FRAZIER. Mr. President, Mr. Rendall, the witness who was occupying the position over the telegraph office, claimed distinctly that he saw the men on the inside of the wall by means of a light over the gate. The witness Amada Martinez, who was in the Cowen house at the time that these soldiers fired into the house, claims that she saw what was going on by the light of the lamp that was in the dining room, only a few feet from the window, where she went to close the blinds, and that she recognized the soldiers there. The witness Littlefield, who was at the mouth of Cowen alley and Thirteenth street, 120 feet away from the corner of Washington and Thirteenth streets, claimed distinctly that he saw and recognized the men as they ran under the lamp at the corner of Thirteenth and Washington streets as soldiers. So that I think the Senator can not, under this record, justify the statement that Preciado was the only man who claimed that he saw these men by reason of artificial light.

Mr. FORAKER. If the Senator will allow me, I do not recall the remark I made as it was quoted by the Senator from Texas [Mr. CULBERSON]. I certainly did not intend to put the statement in exactly the form in which he quoted it.

Mr. FRAZIER. Of course, if the Senator from Ohio did not intend to use that language, it is all right.

Mr. FORAKER. My statement was, or should have been, as I corrected it when my attention was called to it, that he was the only one of the witnesses who claimed to have seen by the aid of artificial light who was in a position where he could have seen by artificial light, and he has been contradicted by his own testimony and the testimony of others.

Mr. CULBERSON. With the permission of the Senator from Connecticut—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Texas?

Mr. BULKELEY. Certainly.

Mr. CULBERSON. Of course I would not undertake to say that the Senator from Ohio used a particular term. I caught his expression, I thought, to the effect that this witness was the only one who claimed to have or who could have had the aid of artificial light. The record, of course, of the stenographer will show exactly what the Senator from Ohio said.

Mr. FORAKER. Certainly; it will show exactly; and if it shows what the Senator quoted, it was an erroneous statement, and it should be corrected, or should be modified rather in the way I indicated, when the Senator called my attention to it,

that he was the only one of the witnesses who testified to seeing by the aid of artificial light, who was in a situation where he really could see by artificial light, if he had been in the position which he placed himself; but as to that he is utterly and flatly contradicted by his own testimony.

Mr. BORAH. Mr. President, will the Senator from Connecticut yield to me for a moment?

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Idaho?

Mr. BULKELEY. Certainly.

Mr. BORAH. I call attention to the testimony of the telegraph operator, who testified that he saw by artificial light. While there is some dispute about all these questions, yet it must be conceded, I think, that the light was there for him to see by if he was in that place.

Mr. FORAKER. I do not want to interfere with the Senator from Connecticut, who is delivering a very carefully prepared speech, but all these matters to which the Senator refers will receive due attention at the proper time in so far as they have not already received it. As to Rendall and his wife, I commented upon their testimony the other day when discussing this subject. Two minutes after the first shot was fired anybody could see people marching in any direction almost in the reservation. All were astir; all were aroused; all was excitement; and men could be seen going here, yonder, and everywhere. What people saw then amounted to nothing.

Mr. SCOTT. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from West Virginia?

Mr. BULKELEY. Certainly.

Mr. SCOTT. Mr. President, as it is a question whether these soldiers were recognized on that night, and as it has been proven that it was rather a dark night, I will say that our friend, the Senator from Idaho [Mr. BORAH], made one of his strongest points, as I understood him—of course he is a learned lawyer, and I am only a layman—on the testimony of Mrs. Leahy, who said that she saw from her window back of barracks "B" and recognized soldiers as shooting from that porch and then springing over the wall and running down this particular alley. I asked this same lady, when she was on the witness stand, if these soldiers wore hats. She said they did. I asked her where she was standing. She said in an upstairs window. I asked her how near was the nearest light. It was proven that it was about 180 feet, and that it was a carbon oil lamp. I said, "You are sure they were soldiers, and negro soldiers?" She said: "Yes, sir; I recognized them. One of them was a ginger-cake nigger and had freckles on his face."

The Senator from Idaho the other day, as I understood, made his strongest point on the evidence of that lady. I will leave it to the Senate whether or not such testimony as that would be taken in a court in the Senator's State at home or whether the Senate should take such testimony.

Mr. BORAH. Mr. President, if the Senator will permit me just a moment—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Idaho?

Mr. BULKELEY. Certainly.

Mr. BORAH. So far as the darkness of that night is concerned, there is an abundance of testimony; and the great weight of the testimony is that it was not a dark night at all. There is no contention in this record upon the fact that it was a dark night. The witnesses all testified that it was a clear night, a starlit night, and while the moon was not shining, it was what was called an ordinarily light night. The only parties who testified that it was a dark night were the parties who were interested, after this charge was made, in having it appear that it was dark. The citizens, one and all, agree as to the kind of night it was.

Mr. SCOTT. Will the Senator from Connecticut yield to me for a moment?

The VICE-PRESIDENT. Does the Senator from Connecticut yield further to the Senator from West Virginia?

Mr. BULKELEY. Certainly.

Mr. SCOTT. Then I understand, Mr. President, that the Senator from Idaho is willing to rest his case on the testimony given by this lady, that she recognized these men absolutely as soldiers, because they wore hats, and she was in a second-story window looking down, and that one of them was "a ginger-cake nigger and had freckles on his face." The testimony of a witness of that kind of course carries great weight with him.

Mr. BORAH. Mr. President, I am not compelled to rest my case—

Mr. BULKELEY. Mr. President—



The VICE-PRESIDENT. Does the Senator from Connecticut yield further to the Senator from Idaho?

Mr. BULKELEY. I am willing to yield at all times to a question, and will be glad to reply to any question—

Mr. SCOTT. I beg the Senator's pardon.

Mr. BULKELEY. But I do not want to yield to an argument between other Senators as to what they think.

Mr. BORAH. Of course I will not interfere if the Senator does not want me to, but I was asked a question which I should like to answer.

Mr. BULKELEY. I have no objection to the Senator asking me any question or interfering with me, but when he gets up a discussion with another Senator as to what happened, I must decline—

Mr. BORAH. Do I understand the Senator declines to yield?

Mr. BULKELEY. Certainly; I—

The VICE-PRESIDENT. The Senator from Connecticut declines to yield.

Mr. WARREN. Will the Senator from Connecticut yield to me for a moment?

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Wyoming?

Mr. BULKELEY. Certainly.

Mr. WARREN. I hope the Senator from Connecticut will be allowed to finish; and it is perhaps a selfish hope, because I want to get up an appropriation bill. Now, I understand if one Senator interrupts and alludes to the argument of another, that it is as necessary to yield to the second Senator as to the first; but I rather hope the Senator will be allowed to proceed now, as he wants to do, and finish his speech.

Mr. BULKELEY. Now, Mr. President, diverging from the remarks I have written, I want to reply for a moment to the question which was first interjected by the distinguished Senator from Texas [Mr. CULBERSON], as to the witness who was impeached to some extent—and the Secretary of War impeaches the testimony of his wife on account of collusion between the two as to the details of the testimony that they should present to this committee—the facts are, Mr. President, that there was no light whatever within 150 feet of the point where Odin testified he saw these colored soldiers by the aid of artificial light. One light was located on the corner of Washington and Thirteenth streets, and the other light at the corner of Thirteenth street and Elizabeth street—more than 300 feet apart, and it is testified that none of these city lamps was more than 8 candlepower. Mayor Combe, in his testimony, in answer to some inquiries which I made myself, testified that the streets were comparatively full of trees; and Lieutenant Leckie says that the reflective power of all these city lamps—"the reflective radius," as he expresses it—was not to exceed 20 feet. If that testimony is correct, I would ask the Senator from Texas, or any other Senator, what possible aid from those lamps could this man, sitting with his wife, and whose testimony has been equally impeached with that of his wife, secure from those small 8-candlepower lamps, with a reflective radius of 20 feet, when they were at least 150 feet away from the locality where this man Odin said he saw these troops?

Mr. SMITH of Michigan. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Michigan?

Mr. BULKELEY. I do.

Mr. SMITH of Michigan. According to the map that is upon Senators' desks, there seem to be but six street lamps within a radius of about that many blocks.

Mr. BULKELEY. There were only four.

Mr. SMITH of Michigan. Four, between Twelfth street and the fort?

Mr. BULKELEY. I think the Senator could not have been here when I explained the location of those lamps.

Mr. SMITH of Michigan. No.

Mr. BULKELEY. From Cowen alley from Fifteenth street to Twelfth street, which is the route taken by the raiders, as far as Thirteenth street there is not a single lamp, public or private. From Cowen alley to the corner of Thirteenth and Washington streets, which was the extreme point over which the raiders traveled, there is only the lamp at the corner of Thirteenth and Washington streets. So that on the direct route over which the raiders went there was not a single lamp from the fort to the corner of Thirteenth and Washington streets, where the first and only lamp was located. There was a light on Elizabeth street, 20 or 30 feet from Cowen alley, and there was another one on the corner of Washington and Thirteenth streets, which is an equal distance from the alley. Those are all the lights that were in all this territory.

The Secretary of War says the testimony of Mrs. Odin should be impeached because of the evident collusion with her husband as to the details of their testimony. That it corresponds so closely in its details is evidence of that fact. I make the claim, Mr. President, and I believe it is a fair one, that the evidence of Mr. Odin and Mrs. Odin, for the reasons stated by the Secretary of War, even if the facts which they state are true, is not entitled to any credence in this investigation.

The lieutenant of the police, Dominguez, who lost his arm in the raid, was another of this class of witnesses, but his opportunities to see the raiders were limited to two points (see testimony, vol. 3, p. 2114), as the soldiers crossed the alley at Fourteenth street and again as he rode across the alley at its intersection with Thirteenth street, when, as he testified:

I was riding fast on horseback.

Now, to contradict his testimony, I will state that Policeman Padron was stationed at the corner of Washington and Fourteenth streets, where the lieutenant testifies that he went, looking down Fourteenth street, and saw these soldiers crossing this alley by the flash of the guns.

The policeman, Padron, testifies on page 2145, volume 3, Senate hearings, as follows:

Q. But I want to know whether this firing that lighted up the faces of the men so you could tell their uniforms, whether that was over when the lieutenant arrived?—A. I returned from the corner of Fourteenth and Washington, along Washington, and there I met the lieutenant.

Q. Did not the lieutenant come to Fourteenth and Washington streets?—A. No; he came to about the middle of the square.

Q. Did the lieutenant go down with you to Fourteenth and Washington?—A. No; he did not reach that point.

Q. Did not go down to the corner at all?—A. No.

If this testimony of the policeman, Padron, is to be relied on, the lieutenant could not have seen the soldiers at Cowen alley and Fourteenth street, as he has testified; at the only other point of observation, Cowen alley and Thirteenth street, where he testifies he "was riding fast," I submit, Mr. President, that looking down into a dark and absolutely unlighted alley from a distance of 30 to 40 feet that any sort of identification would be impossible.

I now come to the poor Mexican woman who lived with the Cowen family, whose house was located at the corner of Fourteenth street and Cowen alley, facing Fourteenth street. She was evidently, if I could judge by her appearance upon the stand, an ignorant Mexican woman, unable to speak English, and very little qualified, so far as I could observe, to intelligently disclose, for many reasons, what she saw or thought she saw that night.

But I want to call the attention of Senators to the situation and surroundings of the house from which her observations were made. Here is a photograph [exhibiting] which shows the house. If any Senators are interested enough at any time to look at the exhibits which are in the files of the Senate, they will find this photograph is No. 12 in Senate Document No. 155.

I call your attention to the fact that it is located some feet back from the alley, not close to the alley, and is separated from the alley by a closed board fence several feet in height and, as the evidence shows, coming up about to the shoulders of an ordinary man. I say it would have been impossible, looking out from the low windows of this low house over this board fence, which was the height of an ordinary man's shoulders, for this woman, who was only at the window for a moment, while the firing was in progress, to be able to describe, with such completeness as she states, the dress of a man from head to foot—leggings—covered by a board fence—belt around the center of his body—covered by a closed board fence, and of a sufficient height to disclose only the firings that were over the fence.

So I conclude that her testimony is entitled to very little, if any, credence, because I can see, and I think any Senator who will give it thought for a moment will see, that standing as those men must have been on the ground, and a closed board fence between them and this low Mexican house, which this picture discloses, it was absolutely impossible for anybody, whatever their intelligence, looking out into the darkness, to be able, in the detail of leggings and belts, to describe from head to foot the clothing of anyone.

Now, another witness, and the one to which the Senator from West Virginia [Mr. SCOTT] referred, I could dismiss without a word of comment. I feel certain that, with all her fearlessness, because she asserted—and her appearance justified the assertion—that she did not stand in fear of any man—lightning was the only thing she was afraid of—with her appearance on the witness stand, her unfavorable impression on the other

members of the committee, that little, if any, reliance was given to her testimony. It was impossible in that midnight darkness and looking through the trees of the surrounding properties to see 300 feet away and distinguish with the distinctness which she described the appearance and form of soldiers on the porch of the barracks. The officers of that fort had great difficulty in the open in distinguishing each other and in distinguishing themselves at distances as described by these officers, times without number, of 5 or 10 feet.

These witnesses whom I have named—this woman, the lieutenant of police, Preciado, the two Odins, and McDonald—comprise almost the entire number of so-called "eyewitnesses" and "identifiers" of these raiders.

Mr. FULTON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Oregon?

Mr. BULKELEY. Certainly.

Mr. FULTON. Will it interrupt the course of the Senator's argument if I ask him a question?

Mr. BULKELEY. No, sir; I shall be glad to yield.

Mr. FULTON. I was a member of the Committee on Military Affairs while this testimony was being taken, and heard considerable of it, and read it all very carefully. To my mind the testimony was overwhelming that some of the negro soldiers did the shooting. The Senator takes up the testimony of each individual who testified that he or she saw negro soldiers, identified them as soldiers, and points out some fact which, to his mind, tends to weaken the testimony of that individual.

While there is much truth in what the Senator says, and in the criticisms he makes on the individual testimony, there was this fact which appealed to me, and I ask the Senator how it affected his judgment: That immediately after the shooting the people assembled, as naturally they would, in crowds about the town, and there was but one voice from all of the people, and that was that the shooting had been done by the negro troops. There was no dissenting voice in any crowd, apparently. Everybody who at that time said he had seen the persons who did the shooting said it was the negro troops. Nobody seemed to make any other statement. There could have been no conspiracy extending throughout all the inhabitants of the town to cause them to come together and thus talk and thus designate the perpetrators of the outrage.

Mr. BULKELEY. There is no evidence whatever to substantiate even the suggestion that in this assembled crowd there was a single one of the so-called "eyewitnesses." There is every evidence to my mind that this assembled crowd to which the Senator has alluded embraced a very different class of men, to which I shall allude at a later period of my remarks.

Mr. FORAKER. I want to say one thing, if I may be permitted to interrupt the Senator to say it.

Mr. BULKELEY. Certainly.

Mr. FORAKER. It is in answer to the suggestion of the Senator from Oregon.

The testimony to which he refers did not appeal to me at all, because, without an exception, the men who merely heard the firing and who did not pretend to see anybody were convinced from the first shots, according to their own testimony, that it was the negroes and nobody else.

Take the case of Mr. Hammond, who was sitting at the Miller Hotel and heard the shots. He immediately announced "The negroes have broken out at the garrison and are shooting up the town." Nobody had told him anything. The state of mind was such that the citizens of that town seemed to jump to the conclusion, whether they saw something or did not see something, that the soldiers were doing the shooting.

Mr. FULTON. It would perhaps be quite natural that persons who did not see those who were actually engaged in the shooting, but who heard the shooting come from the direction where the troops were, should surmise it was the troops who were doing the shooting. But I think the Senator from Connecticut is mistaken when he says none of those who saw the shooting were in the crowds that assembled.

Mr. BULKELEY. Does the Senator from Oregon claim there is any evidence to show there was one man in the crowd who claimed to have seen the shooting?

Mr. FULTON. Yes. I have the evidence here.

Mr. BULKELEY. Except possibly the policeman.

Mr. FULTON. The policeman and some of the others; those who were around in saloons.

Mr. BULKELEY. I think if the Senator will wait until I reach that point, he will see the character of that crowd.

Mr. FULTON. But what I desired particularly to call the attention of the Senator from Connecticut to, and to ask him to explain, because it is a fact which has great influence in my

mind, is that either the negroes did the shooting or somebody else did. The shooting was done.

Mr. BULKELEY. There is no doubt about that.

Mr. FULTON. Everybody among the citizens of the town, when they met the next morning and when they met immediately after the occurrence, said it was the negro troops. Some of those people—

Mr. BULKELEY. They naturally were not going to charge themselves with it.

Mr. FULTON. Some of those people had seen the parties who did the shooting, and they told others. Everybody who said it was the negro troops was not an eyewitness, but some of them had been. It is a most remarkable fact that not a single person in all that town pretended to have seen anybody else than negro soldiers.

Mr. BULKELEY. I will reach that at a later period in my discussion.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Ohio?

Mr. BULKELEY. Certainly.

Mr. FORAKER. I should like to ask the Senator from Oregon if he thinks that any more remarkable than that a body of ten or twenty men should march through the town shooting right and left, with every man in the town himself armed, with his bedroom full of rifles and pistols, and with armed policemen about, and that the marchers should suddenly disappear and no human being be able to tell in what direction they went?

Mr. FULTON. If the Senator from Connecticut will allow me—

Mr. BULKELEY. I do not want to yield for any discussion between Senators.

Mr. FORAKER. I only mention that to show how many remarkable things there are connected with this case.

Mr. FULTON. I do not want to intrench upon the time of the Senator from Connecticut—

Mr. BULKELEY. I am perfectly willing to answer any question; but if Senators want to discuss this question, I wish they would discuss it in their own time and not mine.

Mr. FORAKER. The Senator from Connecticut is quite right.

Mr. FULTON. I was only undertaking to answer the Senator from Ohio.

Mr. WARREN. Will the Senator from Connecticut yield to me for a moment?

Mr. BULKELEY. With pleasure.

Mr. WARREN. Of course I realize that any Senator, who rises and is recognized can proceed, but I want to remind the Senate of one thing. This Brownsville matter is not up regularly, nor is there pending a motion to take it up. It is up on the courtesy of the Senate, extended always to a Senator who has a prepared speech. The Senator from Connecticut has shown an unwillingness to be interrupted in the general flow of his remarks. I hope he will be permitted to proceed, and I hope so, because I think we ought to get some of the appropriation bills into the hands of conferees. At least some of the members of the Senate are involved in a great many conferences, and some of the conferences are of a nature that will take a great deal of time.

Mr. FULTON. Mr. President, just a word.

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Oregon?

Mr. BULKELEY. Certainly.

Mr. FULTON. I was perhaps the offender in this instance, because I asked a question. I only want to say that while I recognize the importance of considering the appropriation bills, when the courtesy is extended to a Senator to make a speech I think we will have to insist upon our right to ask questions when there is something we want to have explained.

Mr. BULKELEY. I recognize fully the propriety, in order to meet the views of many Senators and others, of getting the appropriation bills through the Congress as rapidly as possible. But I believe that the questions involved in this discussion, involving justice to fellow-men and servants of the Republic, are of enough importance to postpone for a few minutes or for a few hours the discussion even of financial measures.

Mr. WARREN. Mr. President—

Mr. BULKELEY. I am not criticising the Senator from Wyoming.

Mr. WARREN. I agree perfectly with the Senator. Only I think that he will agree with me that when we enter into a general discussion of this question we ought to take it up with that understanding and go on with it. I think he is right about the importance of it, and I hope we will take plenty of time before we get through to thrash it out so that everybody will understand it.



Mr. BULKELEY. I have no doubt we will.

Mr. FORAKER. We will have plenty of time to discuss it thoroughly before the Congress adjourns.

Mr. WARREN. Of course we will. That is right. There will be no division of sentiment on that.

Mr. FORAKER. No.

Mr. BULKELEY. Now, these witnesses, whom I have named, whom the Government, even, through the Secretary of War, has discredited—and it needed no words of mine to discredit their testimony—with the policeman, comprise practically all the so-called eyewitnesses. So far as concerns policemen other than those already referred to—I think Dominguez, as the lieutenant, is the only one I have referred to—I shall content myself with quoting from the testimony of Captain Kelly, one of Brownsville's most prominent citizens, chairman of the citizens' committee which conducted the first investigation of this affray, as to their character for truth and veracity.

Testimony of Capt. William Kelly, page 2561:

Q. Mayor Combe has testified that Policeman Padron told him that he fired his revolver, down on Washington street, in that direction.—A. Yes. As to Policeman Padron, I am very much about that as I am about the negroes.

Q. You do not believe the policemen, either?—A. No, sir.

Q. Well, I don't either.

Senator TALIAFERRO. You agree on one point, anyway.

By Senator FRAZIER:

Q. You do not mean to say that Padron's evidence given here as detailing the facts of the shooting of Dominguez was not true?—A. I do not know; I have not read that. I do not know what he testified to. But I mean the Mexican of that class is very liable to lie, if he thinks he might lie.

By Senator OVERMAN:

Q. Is that the character of Dominguez?—A. Very much.

By Senator FORAKER:

Q. They are all that way, are they not?—A. Yes, sir. There are some of them—

Q. But these policemen, you think, are a very shiftless and unreliable lot?—A. They are not the best of the Mexicans, by a long ways.

Q. The way they acted would seem to indicate that.—A. Yes; that is one thing. I believe that the men Mrs. Leahy hid in her house, or wherever she put them, were not the only ones that sought similar shelter somewhere.

Q. Then, whatever they would say you would take with a good deal of allowance?—A. Yes.

Q. And be very careful about it?—A. I would certainly consider whether it was in accordance with the other facts.

By Senator WARNER:

Q. You have known Dominguez a good while?—A. Yes, sir.

Q. The lieutenant of police?—A. Yes, sir.

Q. He is an honest and truthful man?—A. Yes; an honest and truthful man, and a very courageous man.

By Senator TALIAFERRO:

Q. Then you did not understand Senator OVERMAN's question a while ago, when he asked you if Dominguez was the kind of a Mexican that you were describing?—A. No, no. Dominguez is not like that. I am not very certain about it, but I think he is not a Mexican. I think his father was a Greek.

Pages 2552, 2553:

Q. The testimony shows that there were nine or ten policemen on duty that night.—A. Oh, they were on duty all over town, I judge. I do not know where they were. My belief is that most of the Mexican police were in hiding; that is my personal belief.

Q. We understand that two of them were.—A. That is my belief.

Q. You know Mrs. Leahy?—A. Yes, sir.

Q. She keeps a hotel?—A. Yes, sir.

Q. We understand that she took care of two of them.—A. I have heard that she secreted two of them in her house; yes.

Q. But that would leave seven or eight out in the town who could have followed those men.—A. I do not think they were really following those people.

Q. Do you think there was any trouble, when twenty or thirty of these men were marching through the streets and shooting up the town, for somebody to have shot and killed some of them? If they had done that, we would have had no trouble at all in knowing whether they were soldiers or not.—A. There were no citizens out, as I understand it, until those soldiers went back in the barracks.

With the impeachment of most of the witnesses by the Secretary of War in his communication to the President, the impeachment of the balance of them, almost every one, by the evidence of the chief citizen of the town, the chairman of the investigating committee, Captain Kelly; the surroundings of the night and its darkness; the poorly lighted streets of the city, mostly not lighted at all, the evidence is convincing to me that any attempted or supposed identification of the soldiers, if soldiers they were, was absolutely impossible.

An investigation of visual observations, or powers of vision at night under conditions similar to those in Brownsville, was conducted by Army officers at Fort McIntosh (Lieutenant Blyth, Lieutenant Harbold, Lieutenant Wiegstein, and Colonel Stucke). Colonel Stucke was not an Army officer. He was an engineer who happened at that time to be located in the vicinity of Fort McIntosh.

As a result of such observations Lieutenant Blyth testifies, Hearings, volume 2, pages 1990-1993:

Q. Now, go ahead and describe what that experiment was.—A. He arranged to have the men go down there at night. We did not know how he was going to conduct it at all. After everything was ready we

went out at about half past 8 in the evening and stood on the edge of an arroyo. The men were down underneath. When the first volley was fired Major O'Neil shouted to him and asked him which way the men were facing. We could not tell. Lieutenant Wiegstein laughed and said that was a part of the test; that he did not care to say. He wanted us to find out for ourselves.

Then we moved down about 50 feet farther, I should say, along the edge of the arroyo. Two more volleys were fired, and some fired at will, but all we could see was the flash of the rifle. We could not see the rifle that fired it.

Q. Have you any memorandum that shows the distances at which you were making the observation?—A. Yes, sir.

Q. Please produce the memorandum and tell us how far the squad was away from you when the first firing which you have mentioned was done.—A. The first firing on the horizontal was 50 feet and 4 inches, and the vertical height was 21 feet and 2 inches.

Q. That was which firing, the second or the first?—A. It was the first.

Q. You were that far distant?—A. Yes, sir.

Q. And at that distance could you distinguish the men?—A. No, sir.

Q. Could you tell whether they were white men or negroes or Mexicans?—A. The light was not sufficient for us to tell which way they were facing even.

Q. You could not even tell that?—A. No, sir.

Q. Could you tell anything about the different articles of clothing they wore?—A. No, sir.

Q. Was there a further firing?—A. Yes, sir.

Q. Where did that take place? How far were you from them?—A. That was 24 feet on the horizontal and 20 feet 7 inches above them. The results were the same.

Q. Then there was another trial?—A. Yes, sir; we moved down then.

Q. You moved down or they moved down?—A. We moved down to another place. That was 69 feet 2 inches away and 20 feet 5 inches above them; and looking almost into their faces, when the volleys were fired, all we could see was the flash, that was all.

Q. You could not tell anything about their faces, you mean?—A. We could see nothing but the flash.

Q. And you could tell nothing about their clothes?—A. No, sir; we could not even see the rifles that were fired.

Q. You could not even see the rifles?—A. No, sir.

Q. Could not tell whether they were Krag or Springfield or Winchester or what?—A. No, sir.

Q. Was there any other firing, still another test?—A. Yes, sir; after that they marched down one arroyo and came up another, almost directly underneath us, in single file, but we failed to distinguish anyone, could not tell who they were at all. They were halted then underneath us, at that time 20 feet and 5 inches below and 18 feet and 7 inches from us. Then the flash of the rifles would come, and the eye would involuntarily close. The closer it got, the more the noise of the report and the flash of the rifle attracted your eye. Before you could take your eye away to look for anything else, the light would disappear, so it was impossible to see anything.

Q. Did you make any further tests?—A. Yes, sir; we brought the men up—

By Senator FORAKER:

Q. After these firings in the arroyo, what happened next?—A. We brought the men up on the bank—took them up on the road. The road was about 8 feet wide. We divided ourselves into two parties, one party on each side of the road. The moon was shining, and it was a clear starlight night, so there was a good light. The men were marched past, in single file, between us, and we wanted to see if we could distinguish the features of the men. After they all passed by I asked Major O'Neil to have a number of white officers march past, so I could get the exact distance to us from them, to see if I would get the same impression that I did from the soldiers going by. Lieutenant Wiegstein came back and laughed and said: "Then you don't know that there are white men in the line?" I said: "No; I did not know that." So the detail was halted and I went up and scanned each man's face. We were about 2 feet from them at that time. I peered right into their faces, and I myself picked out one man who was a little lighter colored than the remainder, and he turned out to be a Mexican. The other men I did not distinguish at all. After we had passed he told me that there was a white man in the center of the line, and also a man who, I believe, was an Italian.

Q. Did you have any further experiments?—A. That night, after the moon went down, we went out and had the same experiments.

Q. With the same results?—A. And with the same results. The only difference was that after the moon went down, and at a greater distance—we were 69 feet and 2 inches away—when the rifles were fired by volley what I saw was just a long line of legs with dark material. It seemed to be long trousers that the men had on, but after the experiment was over and they were brought up on the bank I found that they had on khaki breeches and leggings. So I received a false impression.

Q. And you observed as closely as you could?—A. Yes, sir; we cautioned one another to watch. Not only that, but after the first volley was fired we cautioned one another to watch where the faces should be.

Q. What interest had Colonel Stucke, if any, in that investigation?—A. None whatever; no interest at all. He was there as a guest of Major O'Neil to dinner and went out with us after dinner.

Q. He is not connected in any way with the command?—A. No, sir.

Q. Were you all of one mind as to the result of the investigation?—A. As far as it went. It was impossible to distinguish features by the flash of a rifle, or to distinguish color or complexion.

Q. After nightfall, when the firing was in the dark?—A. Yes, sir.

Q. Did you have any further experiments?—A. We had another one on the 11th of March at night. At that time Captain Lewis and Lieutenant Harbold and myself were the observers.

Q. Was that of this same general nature?—A. Of the same nature as in the arroyo. After the firing in the arroyo we came up and went into my house, and went upstairs and looked out of two windows, 3 feet away, down, and the men were marched past underneath the windows, and we failed to recognize any features or any complexion. We could distinguish from the light shining out from my window on the first floor that they had on shirts made of dark material of some kind, and lighter trousers, but what they were we could not tell.

Q. Yes.—A. Then they were moved around in front of the house and marched across the parade ground, and in rear of a light, and when they got about 60 feet away we were unable to see them. They disappeared entirely from view. They were brought back and marched between a street lamp and my porch—we were all sitting there—the distance being about 20 paces. We afterwards measured that. We did not recognize anyone. Then they were brought around, and right

along on the sidewalk in front of the house, which is only 5 paces away, and at that distance we failed to recognize Lieutenant Wiegman, who was in the center. We did not know he was there. He was the only white man in the lot.

Q. What was the character of the night? Was it an unusually dark night?—A. The stars were shining, and there was no moon.

Q. The stars were shining, and no moon?—A. Yes, sir; with a street lamp only 20 paces away.

Q. Now, if anyone were to say that looking out of a window of a dark night he or she saw a gun fired, and recognized by the flash of that gun, it being a high-power rifle such as you have in use, the face of a man as that of a negro, and was able to detect that he had freckles on his face, what would you think of that kind of a statement, from your observation and experience?—A. I would not believe it.

Q. You would not believe it?—A. No, sir.

Q. And what would you believe of a statement of similar character, to the effect that by the flashes of rifles it could be determined whether the hats worn by the men shooting the rifles were black hats or gray hats, or whether they had cords around them or not?—A. With our rifles the experiments showed that the flash of a rifle was not sufficient to show you anything.

Q. You could not tell what kind of a rifle it was, even?—A. No, sir; you could not even see the rifle that fired the shots.

The testimony of all the other officers engaged in this investigation was of the same general character and need not occupy the time of the Senate.

These statements would justify the conclusions, from the character of the testimony of at least one of the witnesses, that but little, if any, credence can be given to the record testimony as to any satisfactory identification of soldiers that night.

#### THE FIRST SHOT.

The testimony of the citizens of Brownsville, with exceptional cases, is, that the firing was down in the *direction of the fort*, and no attempt is made to locate it within the reservation. Mayor Combe, who was aroused by the early firing, testifies:

I was sleeping on the back porch. I dozed off and was not very sound asleep when I heard what I thought to be four or five pistol shots in a southerly direction from my home.

This would be, as he states later, in the direction of the barracks.

Captain Kelly says—and this testimony is somewhat in explanation of the character of the first firing—and shows to my mind conclusively that the firing heard by Mayor Combe, that heard by Captain Kelly and all citizens of Brownsville, was of such a character as to come from guns that were not in the hands of troops. Captain Kelly, pages 2528-2529, volume 3, Hearings, testifies:

Q. Did you hear the shooting?—A. Oh, yes; very distinctly. I was in my library reading. I got up and went to the front of the house and lighted a couple of gaslights there to see if I could see where it was, but I was unable to see anything. At first I thought the shots were some Mexican procession, possibly, passing. That is about the only shooting we ever have there.

Q. What is the character of that shooting?—A. Well, they carry with them fireworks that they make, that they call *cuetas*—a sort of imitation of Chinese firecrackers—and when they have a procession at night—they have a great many of them, frequently celebrating saints' days.

Q. A great many saints' days?—A. Yes, sir; quite a number; and quite a number of nonsaints' days. They have anniversaries there. They celebrate the birthday of Diaz and the battle of Puebla, at which he made his first success, and all that sort of thing. The societies turn out, and they fire these *cuetas*.

Q. You did not go out of your house?—A. No; I did not go out at all.

Q. And you knew nothing as to who were charged with doing the shooting up until the next morning?—A. No; nothing at all. I did not know anything about it.

So that this shooting, with all its dangers, does not seem to have been the cause of great trouble to the better part certainly of the citizens of Brownsville. Most of these so-called "eyewitnesses," after the five or ten minutes during which this shooting was going on, retired quietly to their homes, as they have testified, and never went on the street to join with the lawless mob that was assembled there and only dispersed by the authorities.

Major Blockson, notes, Senate Document No. 155, page 177: *Notes by Major Blockson on affidavits taken before Captain Lyon (submitted in Colonel Lovering's report).*

When at Fort Brown I found a number of men positive that shots were fired toward the post. Their statements were based on flashes from rifles and sounds of bullets only. I could find no evidence of bullets striking anywhere in the post and none has yet been given. My theory (p. 3[44] of my report), sustained by the general trend of evidence given by soldiers and citizens, is that first shots (especially those toward post) were fired high (for effect only upon the minds of men in the garrison). I heard nothing of the expression "black ——" of ——" etc. It will be noticed that the affidavits containing them were made by C Company men a month or more after the occurrence. As far as known, the soldiers of that company were the only ones, with one exception, who had trouble in town before the 13th of August. Nobody in B Company seems to have heard the expression, though the quarters were much nearer the firing than C Company's.

A. P. BLOCKSON,  
Major, Inspector-General.

If Major Blockson's theory is correct, it sustains and gives a reason why no marks of bullets were found in the barracks by Major Penrose or any other officer. They were fired high in the air for a purpose, Mr. President, in connection with the lan-

guage that was used with respect to this firing and which Major Blockson quotes in his report, and which I shall not venture to quote here even to sustain my remarks.

These comments of Major Blockson conformed to the mass of evidence which might be culled from the testimony to the effect that the first shots from mixed arms, especially those toward the post, were fired high, for effect only upon the minds of the garrison. I shall content myself with inserting here but a limited amount of testimony upon this important point, which leads up to the conclusion that the raiders could be looked for elsewhere than among the men of the garrison. I firmly believe that these first shots and the language used in connection therewith was an effort to draw the men out of their quarters and into a personal altercation without arms, as it must have been well known that they were securely locked in the gun racks. It is hardly conceivable that soldiers would have entered into a conspiracy to shoot up the town and commence the execution by first arousing the garrison and its officers, as was the effect of this shooting, and then escape detection and punishment.

Lieut. Henry S. Grier, who was the adjutant of the post, testifies, Hearings, volume 2, page 1699:

Q. Did you hear any bullets at all that night that you remember?—A. I thought when I was coming across the parade ground to the east about up in front of the commanding officer's quarters I heard a scattering of shot on the ground, but I would not be positive about it. It might have been something else; some other noise.

Q. That it is the only thing you heard that sounded like bullets?—A. Yes, sir.

Senator WARNER. He has not said they sounded like bullets.

A. I said it sounded more like shot.

Q. Did you mean shot as though—A. Yes; like buckshot from a shotgun, or something of that kind.

Matias G. Tamayo, the scavenger, who went on duty every night about 11 o'clock, and who was in the best position of any one, for he was awake and performing his duties when the shooting commenced, testifies, Hearings, volume 2, pages 1206-1207:

Q. Got down on the ground and picked up a can and emptied it?—A. Yes, sir; and then I set it on the ground. I heard the first shot.

Q. Where was that fired from?—A. I think it was fired from right along this alley here [indicating on map].

Q. What did you do after that?—A. I heard a lot of shooting.

Q. Then what did you do?—A. I put my lantern out as soon as I heard the first two shots.

Q. Then what did you do?—A. I stood for a little while facing the place where the firing was going on.

Q. Yes.—A. And at the same time I could see the galleries, right here [indicating on map], and the place where the firing was taking place, right in front of me.

Q. What was taking place?—A. The firing taking place.

Q. You are not pointing to the town?—A. No, sir; I am not [pointing to the map].

Q. The firing was in town?—A. Yes, sir.

Q. Did you see any men moving about there before that first shot was fired?—A. No, sir.

Q. Did you see any lights about the barracks?—A. No, sir.

Q. Was there any noise about, anywhere?—A. No, sir; everything was quiet.

Q. Everything was quiet?—A. Yes, sir.

Q. Did you see any men moving about inside the wall near the sink of B Company?—A. No, sir.

He was within 25 feet of the point where this man Rendall testifies that, looking down Garrison road, unlighted, 150 feet, he saw a body of men jumping over the wall. This man Tamayo was performing his nightly service and standing between the point where Rendall was looking out of a window and within 20 or 30 feet of the point where Rendall saw the men jump over the wall, and he was in close proximity with the wall all the time, stationed between the barracks and the wall.

Q. Did you see anybody jump over the fence or the wall there in rear of B Company, opposite the mouth of Cowen alley?—A. No, sir.

Q. Or at any other place?—A. No, sir.

Q. If there had been any shots fired from the upper windows of B, C, and D barracks, were you in a situation to have seen them?—A. Yes, sir; I could very easily have seen them, because I could see the barracks here—around right here in front of me [indicating on map].

Q. Now, were any shots fired from the barracks?—A. Not while I was there; no, sir.

Q. How about the first shots?—A. I heard the first shots and then about twenty more shots, and then I drove off.

Q. When they commenced shooting, then you left immediately?—A. I went away immediately.

Q. With your cart?—A. Yes, sir. At the same time when I heard this first shot I heard a few bullets going into the post over the administration building.

Q. That is important. Which way were they going?—A. They went up into the air.

Q. Went up in the air?—A. Yes, sir.

Q. Could you tell which way?—A. Across that way [indicating on map].

#### PAGES 1208-1209:

Senator FORAKER. Yes. Now, you have testified before in this case. I want to read you an affidavit that was made on the 14th day of August, 1906, found at page 75 of Senate Document No. 155.

(The affidavit referred to is as follows:)

FORT BROWN, State of Texas:

Personally appeared before me, the undersigned authority, one Matias G. Tamayo, scavenger at Fort Brown, Tex., who, being duly sworn according to law, deposes and says:

"That at about 12.10 a. m. on the morning of August 14, 1906, he was in rear of the quarters occupied by Company B, Twenty-fifth



Infantry; that about this time a shot was fired by some person unknown in the street just outside the wall dividing the military reservation from the town of Brownsville, Tex.; that he could hear the bullet and that it appeared to be going in the direction of the Rio Grande River, about parallel to the above-mentioned wall; that immediately following this one shot a number of other shots were fired, all outside the wall.

"Deponent further says that previous to the shooting he saw no soldiers anywhere in rear of the quarters occupied by the companies of the Twenty-fifth Infantry, and heard no talking or news of any kind; and that he saw and heard no shot or shots from any of the company barracks.

"MATIAS G. TAMAYO,  
"Scavenger, Fort Brown, Tex."

Sworn to and subscribed before me this 14th day of August, 1906.

SAMUEL P. LYON,  
Captain, Twenty-fifth Infantry, Summary Court.

A most rigid examination and cross-examination by almost every member of your committee failed to confuse this witness or shake the weight of his testimony. Of all the witnesses, he was the one that was awake and in a position to see what was going on immediately behind the wall of the reservation. He was a Brownsville boy, and had but little time to interest himself with the members of the battalion during their two weeks at Fort Brown.

James H. Howard, Senate Document No. 155, pages 74-75 and 169:

FORT BROWN, TEX., August 14, 1906.

FORT BROWN, State of Texas:

Personally appeared before me the undersigned authority, Private J. H. Howard, Company D, Twenty-fifth Infantry, who, being duly sworn according to law, deposes and says:

"I was a member of the post guard on the night of the 13th and 14th of August, 1906. I was posted as a sentinel on post No. 2, which extends around the barracks, keeping the buildings on my left, at 10.30 p. m., August 13. At about 12.10 on the morning of the 14th, when between C and D Company barracks, I heard a single shot, then five or six, and then a regular fusillade. The shots seemed to come from the street in the rear of the brick wall back of B Company's barracks. I thought they were shooting at me, and I looked in the direction of the sounds to see if I could see anybody, but I could not, and then I went to the front of the barracks and gave the alarm, by firing my piece three times and calling for the guard. I did not see anybody at all but the post scavenger, who was at the sinks in the rear of B Company's barracks. As soon as the shooting commenced he drove away with his cart.

"JOSEPH H. HOWARD,  
"Private, Company D, Twenty-fifth Infantry."

Sworn to and subscribed before me this 20th day of August, 1906.

SAMUEL P. LYON,  
Captain, Twenty-fifth Infantry, Trial Officer, Summary Court.

FORT BROWN, State of Texas, ss:

Personally appeared before me, the undersigned authority, one Joseph H. Howard, private, of Company D, Twenty-fifth Infantry, who, being duly sworn according to law, deposes and says:

"About 12 midnight, Monday, August 13, 1906, I was a sentinel on guard on post No. 2, which extends completely around the four barracks. The first thing that occurred that was unusual was a shot fired in the road opposite where I was at the time, on my post opposite the interval between B and C Company quarters. Several other shots followed in quick succession, and after a short interval what sounded like a fusillade of shots. My first impression was that I was being fired upon. I shouted the alarm after I had looked in that direction and had been unable to see anything. Then I ran to the front of the barracks, passing between B and C Company quarters, and there stayed until the companies had formed, when I returned to that portion of my post. I did not see anyone cross my post except men going to and from the closets before taps. After the shooting men were stationed along the wall alongside of my post. At the time of the shooting the scavenger was at work at the closets along the wall. I do not know who did the shooting. The reports sounded like rifle shots to me. I should judge about fifty or more shots were fired.

"Further deponent saith not.

"JOSEPH H. HOWARD,  
"Private, Company D, Twenty-fifth Infantry."

Subscribed and sworn to before me at Fort Brown, Tex., this 20th day of August, 1906.

SAMUEL P. LYON,  
Captain, Twenty-fifth Infantry, Trial Officer, Summary Court.

Howard was the sentry and, when the shooting commenced, fired the alarm from his rifle and called for the corporal of the guard. All the flashes of guns which witnesses have testified as being within the walls of the reservation I think can readily be attributed to the firing of these signal guns in the air by the witness Howard, who was on guard at his post on his own beat at that hour and who performed his duty by discharging a signal of distress, recognized almost everywhere, and calling for the corporal of the guard.

Mingo Saunders, with a service in the Army of twenty-five years or thereabouts, testifies to the same effect. He was allowed, on account of his long service, to sleep out of quarters, but within the reservation, and he testifies that in proceeding toward the fort the bullets were whizzing over his head.

Sergt. J. R. Reid, Senate Document No. 155, page 75:

FORT BROWN, TEX., August 23, 1906.

Sergt. J. R. Reid, Company B, Twenty-fifth Infantry, stated to me that he did not have the call to arms sounded (he was sergeant of the guard on the night of the 13th of August) until the shots came so fast that he thought post was attacked. He stated also that he formed the guard before having the call sounded.

A. P. BLOCKSOM,  
Major, Inspector-General.

Charles E. Rudy, Senate Document No. 155, page 164:

Personally appeared before me the undersigned authority, one Charles E. Rudy, an artificer of Company C, Twenty-fifth Infantry, who, being duly sworn according to law, deposes and says as follows:

"That he was asleep on the front porch of his company quarters at Fort Brown, Tex., on the night of August 13-14, 1906, when he was awakened about 12 o'clock by a shot. That this first shot seemed to come from the direction of Brownsville, and that right after that shot a number of shots were fired very rapidly near where the first shot was fired. That he got up and went into the quarters, and that by the time he got inside the quarters "call to arms" had sounded, and he went to the gun rack to get his gun, but he found the gun rack locked and went to the back door and looked out to see if he could see the shooting, and saw the flash of a number of guns which were being fired from along the wall which separates Fort Brown from Brownsville, and that it looked as though they were being fired on the outside of the wall. It was so dark that he could not see who was firing, but from the flashes it looked as though about twenty-five or thirty people were firing. From the direction of the flashes it looked as though the parties firing were firing in the direction of B Company's quarters, and high. That as the shooting continued he heard cursing and calls of "Come out, you black — of —, and we will kill all of you," from where the shooting was going on. That he left the door and went to get his rifle and fall in with the company outside of the quarters, and saw no more of the shooting. That he does not know who did this shooting. "And further the deponent saith not.

"CHARLES E. RUDY,  
"Company C, Twenty-fifth Infantry."

Sworn to and subscribed before me at Fort Reno, Okla., this 12th day of September, 1906.

SAMUEL P. LYON,  
Captain, Twenty-fifth Infantry, Summary Court.

This quoted testimony and a volume more which would be merely cumulative form the basis of Major Blocksom's report.

The failure to get the troops outside of the reservation compelled the raiders to pursue their murderous work through the town if their plot to get rid of the soldiers was to prove successful. It is a remarkable fact that, with an armed police force scattered through the town, no concerted effort was made to interfere, pursue, or follow this band of outlaws. If I were to trace these outlaws to their hiding—and I call the attention of the Senator from Oregon [Mr. FULTON] to my statement now, because I think it answers his remark—I should seek them in the crowd of armed men that assembled with the police on Elizabeth street immediately the shooting ceased, looking for a leader to make a further attack on the fort, and were only dispersed by the earnest appeals of Mayor Combe.

Mr. FULTON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Oregon?

Mr. BULKELEY. Certainly.

Mr. FULTON. If it be true that they were there looking for a leader, making an attack on the fort, the Senator can not certainly insist that they had previously organized and attacked the town, because they were disorganized, looking for a leader to attack the fort.

Why attack the fort if somebody in the fort had not attacked them, and why were they looking for a leader to do it?

Mr. BULKELEY. As a part of the conspiracy to drive this garrison away from Brownsville.

Mr. FULTON. If there had been a conspiracy, surely there would have been an organization, and with the organization there would have been leadership. The Senator says they were there looking for somebody to lead them.

Mr. BULKELEY. I have assumed that of the 250 or 200 men who assembled on Elizabeth street these raiders composed but a small part of that crowd. It is not claimed by anybody that they exceeded either ten or fifteen in number.

Mr. FULTON. Nevertheless, I submit if those people had previously organized and were in a conspiracy they had leaders, and had the mob desired a leader they would have led, because they were organized. I submit the Senator will have to find a better explanation than that to show that a mob had gathered there and they were those who had done the shooting.

Mr. LODGE. There is no evidence of it.

Mr. BULKELEY. There is no evidence, I admit. I said I would look for their hiding place among this crowd of men who were appealing for a leader to take them down and assail the fort. I refer to the testimony of the mayor on that point. He said, Hearings, volume 3, page 2386:

Everybody was clamoring and standing around there with these guns, and saying, "Let's go down to the post," and, "Let's go down and do those fellows up." I don't remember the exact language they used, in the excitement of the moment, and I saw that the excitement was getting intense, and Judge Parks was standing to my left, and I said, "Get me a box or something to stand on," and they brought me, I do not remember whether it was a box or a barrel, and I got up and I appealed to the people, first, as an ex-Army officer, and I told them, "I have served with those troops and I know them to be as efficient troops as there are in the world. They are splendidly armed, and if you go down there many a valuable life will be lost."

And I think that was true. Mayor Combe proceeds:

"Besides that, you are within the law. Remain so, and we will get justice." I spoke in that strain for a few minutes. Then I told them that as mayor of the city I would arrest any man that remained on the street. I then went to several of the most prominent citizens there, bank

cashiers and bank directors and county clerks, and so on, and I said, "Gentlemen, you will assist me in dispersing these people here;" and in groups we got them away; very reluctantly, but they got away. There remained on the streets the police officers and several of the citizens whom I requested to remain. I told them to arm themselves, if they were not armed.

This proposed attack upon the post by these citizens conforms entirely to my theory that the post was originally attacked for the purpose of drawing the troops out unarmed, and when that failed these desperadoes, as they had grown to be in their murderous career, were seeking to attack the post as the only remedy.

This is entirely in accord with the views of Major Penrose, who immediately assembled his command and placed his whole battalion in position to defend the post.

In this connection, I would say that the first gun, and the only gun, identified in the hands of a citizen, who was about to enter Crixell's saloon, was a Winchester, which the mayor found—as he advanced down Elizabeth street—in front of Crixell's saloon or gambling house. The mayor, evidently disturbed, exclaimed, "What are you doing with that gun?" and took it away from him and did not wait for any talk at all.

Hearings, volume 33, page 2384:

\* \* \* A. \* \* \* I went on down the street, and when I got opposite Crixell's saloon I saw a man about to go into the saloon with a gun in his hand. I afterwards found it to be an old Winchester rifle.

By Senator WARNER:

Q. The shooting was all over by this time?—A. The shooting was over; yes, sir. I halted him. I knew the man. His name was Jose Garza, or Tamayo, or something of the kind. I know him very well. He sometimes has acted as a special policeman. I halted him, and he stopped, and I said, "What are you doing with that gun?" And I took it away from him. I did not wait for any talk at all, and I said, "Get in there," and I put him in the saloon, and Mr. Crixell said, "That is my rifle." That is Crixell, the saloon keeper. So I gave the gun to him. They attempted to work the mechanism, and it would not work, while I was standing there, right in the saloon. As I walked into the saloon there was a chorus of remarks, such as "Mr. Mayor, the negroes are shooting on the town."

I can readily identify this party as one of the raiders seeking shelter in the saloon or gambling house where he would be welcome and from which the soldiers had been excluded. The possibilities are great that this gun was the one described by Mrs. Leahy, which seemed to her keen vision to be out of order when the firing was going on in the vicinity of Cowen alley and Fourteenth street. This gun was owned by Crixell, or claimed to be, and I fail to find any reason for its being on the street in the hands of another person.

The honorable Senator from Idaho [Mr. BORAH] has intimated that the love of the soldier for his "pass," and their deprivation of the same, was one of the causes that led up to the affray; but I submit, Mr. President, that during their two weeks' stay in Brownsville they had not been deprived of this highly esteemed convenience; it was not until after 5 o'clock of the afternoon of the 13th that any order was issued discontinuing or revoking passes, and this, at the earnest request of Mayor Combe, whose testimony on that point I quote. And this was on the afternoon before the "shooting up" of the town.

Mayor Combe testifies, volume 3, page 2382, Hearings:

I then said to him, in the presence of Mr. Evans, "Major Penrose, this is a terrible affair. The people in town are very much incensed and excited, and I protest against any of your officers or men"—I do not remember now whether I said "officers," but positively I said his men—"going into town to-night." Then I made use of one or the other of these expressions, "Major, if you allow these men to go into town to-night, I will not be responsible for their lives," or "Major, do not allow your men to go out of the post, because there is a great deal of danger in town." One or the other of these expressions I used—I am not sure which.

And again, in reply to an inquiry, Mayor Combe says, Hearings, volume 3, page 2387:

"The citizens are very much excited, and this is terrible," or something to that effect. He said, "Major Combe, I can not believe it. It has been reported to me that the citizens have fired on the post." I said, "No, sir; that is not so." We were in conversation some little while; I do not remember the details now. I said to him, "Major Penrose, you will have to keep your officers and men in the post. They can not come into town under any circumstances, and I hope that you will issue that order, because the people are very much excited and very much enraged, and if any of your men come in, why, it is dangerous"—or, I do not remember whether I used that expression—"I will not answer for their lives." At any rate, I impressed upon him strongly that it would be dangerous for his officers and men to go into the town. He said to me, "Major Combe, I shall certainly cooperate with you in this respect. I shall issue an order that none of my officers or men shall go into the town."

GUNS, CAP, SHELLS, ETC.

The articles picked up in the streets of Brownsville appear to have constituted, in connection with the so-called identification by eyewitnesses, the most incriminating evidence against the soldiers, and these two items of evidence appear to have been the basis of the changed opinion formed by Major Penrose, who, up to the time of the appearance of Mayor Combe with

these exhibits, had persisted that the attack was made upon his command and the post, which I have before stated he prepared to defend.

It is claimed that these shells—almost universally exploded cartridges—were picked up in the streets of the city in the early morning after the affray, as well as clips, bandoliers, and a cap belonging to a member of the battalion, which cap, although bearing the initial of the soldier and thus readily traced to its owner, suddenly disappeared as a factor after the investigation by the citizens' committee, before whom it was produced. It was readily proved that this was of that class of articles that had been disposed of or thrown away and appropriated by the Mexican scavengers, as heretofore testified by large numbers of the soldiers. Its appearance on the streets at this opportune time and its early use as evidence, as well as its immediate elimination, are, to my mind, strong evidence of the well-conceived conspiracy, and a part of it, to compel the removal of the colored troops from that locality. I append here the testimony of Charles W. Askew, the reputed owner of the cap, and which was marked with his initials.

Hearings, volume 1, page 560:

Q. Captain McDonald?—A. Yes, sir.

Q. How do you know it was by his suggestion?—A. He sent me up there one day.

Q. How do you know it was by his suggestion?—A. He sent me up there one day, and I had some caps, and Captain Macklin sent me up there to the administration building, and he asked me how many caps I had drawn since I had been in the Twenty-fifth Infantry.

Q. How many caps you had drawn?—A. Yes, sir. I think they found a cap downtown with my initials in it.

Q. With C. W. A., isn't it?—A. Yes, sir.

Q. He found that down the street?—A. Yes, sir.

Q. And you think that is what led to your arrest?—A. Yes, sir.

Q. Tell us all about that cap. Tell us anything you may have to say about that.—A. I gave the first sergeant one of my old caps when I was at Fort Niobrara, and there was a box of old caps that was shipped down to Fort Brown, and when they got down there they opened that box of old caps, and some of those muchachos, I suppose, found them and got them and carried them away; and I think that is the way they got that cap.

Q. Do you know anything about the cap?—A. No, sir; I never saw the cap.

The shells and bandoliers still remain to be accounted for. It is in evidence, and unchallenged, that a box of exploded shells, etc., was brought down from Fort Niobrara and was deposited upon the back porch of the barracks of B Company, where they were open to the careful search and appropriation by anyone, as testified to by Sergt. Mingo Sanders.

It is uncontradicted that such a box was brought and opened and exposed, and finally a guard put on it to protect it from further depredation.

Hearings, volume 1, page 300-301:

Q. You had about 1,600 shells that you put in boxes?—A. Yes, sir.

Q. And took to Brownsville because they had not been decapped?—A. Yes, sir.

Q. And you put those out on the back porch after you got there?—A. Yes, sir.

Q. Did you see that box there?—A. Yes, sir.

Q. Was the box open?—A. Yes, sir; the box was open, on the back porch.

Q. And could anybody have taken shells out of that box?—A. Yes, sir; anybody that wanted to, because they were compelled—because the Mexicans was so bad down there, picking up clothing and everything that was on the porch, or anything else that was around there, until the commanding officer issued an order to put on that post—to not allow people to pick up and carry away things that didn't belong to them.

Q. That was the reason why that guard was put on there?—A. Yes, sir.

Q. And that was some days after your arrival?—A. Yes, sir.

Q. Because the Mexicans were running in and picking up everything they could?—A. Yes, sir.

Q. What did you see them pick up?—A. Caps, clothing, shoes, and these arctic overshoes, and blouses, and trousers, and everything else. They would pick up everything, whether it was serviceable or not.

Q. All the old cans you would throw out and everything else—they would pick up?—A. Yes, sir.

\* \* \* Q. But you heard these balls going overhead—you have been in battle, have you?—A. Yes, sir; I have; a good deal.

Q. You were at El Caney?—A. Yes, sir.

Q. At Santiago?—A. Yes, sir.

Q. And in the Philippines?—A. Yes, sir.

Q. And you were in engagements in all those places?—A. Yes, sir.

Q. So you have heard a good deal of firing, and you have also heard a good deal of firing on the target range?—A. Yes, sir.

Q. Can you tell the committee whether that was what I will call mixed firing, with different arms, or whether the firing was all with the same kind of arm?—A. It was mixed arms. I suppose there were six-shooters and Winchesters and all calibers, and there may have been some Mausers in it, because it has a keen sound. A Winchester has a very broad sound, like something very loud.

Q. What kind of a noise did those balls make that went over your head while you were lying down?—A. They made a kind of flat noise. It is a kind of experience that a man must more or less have himself that has been under fire. The Krag bullet and the Mauser bullet, too, makes a kind of whiz. It goes "the-ee-ew,"—something of that kind [witness imitating sound].

Senator FORAKER. I am afraid the stenographer can not get that down.



By Senator FORAKER:

Q. It makes a keen sound?—A. Yes, sir; and you can't tell whether the gun is in a tree or on the ground, or close to you or far from you. But these other guns go "boo-oo," something like that [indicating sound], what we in our way of determining call a blunderbuss; and that's the way those guns sound—a loud noise.

Q. Did that firing sound to you like it was firing from a Springfield rifle, such as you had at that time?—A. No, sir.

The careful examination by Captain Macklin, detailed by Major Penrose to seek in the Garrison road and vicinity for any evidence to fix the guilt upon participants in the affray, disclosed this remarkable finding, and goes far to establish the distribution of exploded shells upon the streets—obtained in the way described by Sergeant Sanders—of the conspiracy to fix the shooting up of the town upon the garrison. I ask your close attention to the testimony of Captain Macklin in regard to the finding of the "bunch" of shells and clips, for the reason that it conforms absolutely to the theory that I have formed, that it would be impossible for cartridges fired from high-power guns by a body of moving troops, the exploded shells ejected from the magazine to fall in such a position as the captain found these shells and clips—seven clips, each ordinarily containing five shells, and but six exploded shells—which, after the rapid firing described by many witnesses, would hardly be a fair proportion of either class. It is also a remarkable coincidence that, so far as I recall the evidence or have been able to examine it, these shells and clips are all that have been reported as found between the Cowen house, at Fourteenth street, and the Garrison road, or Fifteenth street, where the first and a considerable part of the firing took place.

Without reading the testimony I will state in a general way that clips and shells, five or six of one and seven of the other, were found in a place about 10 inches in diameter. It is the testimony of Army officers who appeared before us, and it is the uncontradicted opinion of Army officers everywhere with whom I have been able to discuss these questions, that it is absolutely impossible that shells and clips fired from a high-power rifle and ejected therefrom, as they must be after each shell is fired, could have landed in any such position, and the only reasonable conclusion that can be reached is that that "bunch" of shells in that narrow space was placed there and never fired from any rifle whatever that night.

Mr. SMITH of Michigan. Were there any soldiers' caps found there?

Mr. BULKELEY. No; but I described one cap and I gave the information in regard to the cap. It was found and eliminated at once, because it was shown to be of that character of goods that had been thrown away by the soldiers and discarded by them, and when the soldier himself was brought by order of Captain McDonald before the committee, his testimony was credited and the cap and all disappeared.

Captain Macklin in his testimony says, in a few words, they were all in a "bunch" not over 10 or 12 inches in diameter.

Mr. PILES. Was the cap found in that bunch?

Mr. BULKELEY. No; the cap was found in another place on the Garrison road. It was found on the Garrison road in the neighborhood of Jefferson street.

Captain Macklin, Hearings, volume 2, pages 1776-1778:

Q. Light enough to inspect?—A. Yes, sir.

Q. State, now, whether or not before you started to inspect you made any investigations either inside or outside the wall of the reservation, to see what you could find, if anything at all, as a result of the firing.—A. Yes, sir; after I went on guard my station was at the main gate. I had there two noncommissioned officers and six men, and during the night I stayed there except the times that I went away to make inspections. Just as soon as the streak of dawn came I walked up and down inside of the wall, looking for shells. Then I went outside of the gate and went over as far as the telegraph office—

Q. Before you go outside, tell us whether or not you found any shells or anything else inside.—A. No, sir; I did not find anything inside. I went all along the line there inside and did not find anything. Then I went outside, over as far as the telegraph office, which is on the corner of Elizabeth street and right opposite the gate. I did not see anything at all, and then walked down outside of the wall toward the alley, which is directly in the rear, or almost directly in rear, of B Company quarters. Right there at the mouth of the alley I found six clips, I think it was, and seven shells, or approximately that.

Q. Six clips and seven shells?—A. Yes, sir.

Q. Were they exploded shells?—A. Yes, sir.

Q. They were the shells of cartridges that had been fired?—A. Yes, sir.

Q. And they were of the Springfield rifle?—A. Yes, sir; the Springfield rifle.

Q. And the clips were the same?—A. Yes, sir.

Q. You had no clips with the Krag-Jørgensen at all, had you?—A. No, sir.

Q. Now, you found six clips and seven shells?—A. Yes, sir; I think that is the number; I don't recollect.

Q. One clip accommodates how many cartridges or shells?—A. Five.

Q. They were hardly in proportion, then?—A. No, sir.

Q. Now, tell us in what position on the ground—you found these on the ground, did you?—A. Yes, sir.

Q. In what position did you find these clips and shells with reference to each other, and indicate on the map just as nearly as you can where you found them; the exact spot. You can see the alley indicated there.—A. Just about in that position [indicating].

Q. You point to the center of the alley on the town side of Fifteenth street.—A. I have forgotten the width of that alley, but I think it was 16 feet, and they were just about in the middle of the alley.

Q. And they were on the town side of the street that runs along parallel with the wall and outside of it?—A. Yes, sir.

By Senator OVERMAN:

Q. How far from the wall?—A. I should say about 6 or 8 feet—about 8 feet, about half way.

By Senator FORAKER:

Q. The road there is 30 feet wide, as I understand it?—A. Not that distance; no, sir; I think it is 16.

Q. No; the road is shown on the map to be 30 feet wide. It is marked an inch wide, and the map is drawn to a scale of 30 feet to the inch.—A. Very well.

Q. Did you find these shells in the mouth of the alley or did you find them in the road?—A. I found them right in the mouth of the alley, looking up the alley—you could see up the alley—and when I picked up the shells I stood over them, because there were a lot of people up the road and they were looking down toward the alley. There was a great crowd congregated about. I spread out my feet and stooped down over the shells and picked them up, and they were in a space not over that large [indicating]. They were all in a bunch.

Q. You indicate a space circular in form and about how large in diameter?—A. Well, not over 10 inches, sir; 10 or 12 inches in diameter.

Q. Ten inches in diameter. I notice that in your testimony before the court-martial you said a space with a radius of not more than 12 to 15 inches. Did you mean radius or did you mean diameter?—A. I meant diameter, sir.

Q. You want to correct that statement as you now make it?—A. Yes, sir.

Q. Would that be the natural position in which you would expect to find six or seven shells that had been fired out of one of these high-power Springfield rifles?—A. No, sir; it would be impossible to find them that way.

Q. It would be impossible?—A. Yes, sir.

Q. When one of these cartridges is fired out of a Springfield rifle such as you were equipped with there, how far would the shell be thrown ordinarily by the ejector?—A. Well, ejecting it rather quickly, I should think it would be thrown at least 8 or 10 feet.

Q. And then when the shell strikes what happens to it? Does it jump or bounce about on the ground?—A. It depends on the nature of the ground.

Q. That was in an alley—a roadway.—A. In that place it would stick. It was soft ground.

Q. In soft ground it might not bounce?—A. No, sir; it would not bounce at all.

Q. When a soldier or anyone else stands and fires one of these rifles, holding it in the same position, does each one of five or six shells fly the same distance and in exactly the same direction, or are they likely to be thrown in different directions?—A. They would be very much spread about. I do not think any two would drop in the same place.

Q. They would be scattered over perhaps how much ground?—A. Well, perhaps at least 4 feet—3 to 4 feet.

Q. Now, Captain, can you tell us whether anybody had preceded you there that morning or anybody been there ahead of you to see those shells?—A. I am satisfied no one was there, sir. I went away and made an inspection of my sentinels about 3.30 or 4 o'clock. When I returned the sergeant told me no one had been there.

Q. What sergeant was that?—A. That was Sergeant Carlisle. I took Sergeant Harley with me on my inspection of the sentinels.

Q. What kind of men are Sergeant Harley and Sergeant Carlisle? Have you known them well for all these years you have been commanding that company?—A. Yes, sir; you can depend on them anywhere.

Q. They are truthful, reliable men?—A. Yes, sir; anywhere. I would go anywhere with them.

Major Penrose testifies that he examined some of these shells picked up by Captain Macklin, and this is important in view of the fact that the shells found in the street in this "bunch" and the bullets found in the houses do not correspond or belong with each other. As I said, Major Penrose testifies (Hearings, vol. 3, p. 3016) that he examined some of the shells picked up by Captain Macklin; that they bore the marks and were the shells manufactured at the Frankford Arsenal—a Government arsenal. The bullets taken from the houses in the immediate vicinity of the firing, on analysis, showed that they were not of the composition of any bullet manufactured at that arsenal, but were of the composition of those made by the Union Metallic Cartridge Company for the Government under the contract to which I have heretofore referred, as well as for commercial sales; so that it was impossible that these shells found at the mouth of the alley where the firing has been located, or fired from the wall or porch of the barracks as is charged, could have been used in combination with the bullets found in the houses. I append here the analysis of cartridges manufactured at Frankford Arsenal and Union Metallic Cartridge Company, which analysis was made at the Sandy Hook Proving Grounds by the Government chemist stationed there. Also from Penrose court-martial, Senate Document No. 402, part 2, page 1160:

I don't know how many cartridges; I didn't count them.

Q. Were they cartridges or shells?—A. Shells; empty shells, fired shells. I examined two of them, took them from his hand; they were Frankford Arsenal shells.

Q. For what rifle?—A. For our Springfield rifle. I asked him where he had gotten them, and he said right at the mouth of the alley.

Hearings, volume 3, page 3389:

SANDY HOOK PROVING GROUND,  
Fort Hancock, N. J., December 20, 1907.

REPORT FROM THE CHEMICAL LABORATORY.

(Examination of lead cores of caliber .30 ball cartridges, model 1903, Laboratory Nos. 4672 and 4673.)

Two caliber .30 ball cartridges, model of 1903, made by Frankford Arsenal and two made by the Union Metallic Cartridge Company were

received from the Chief of Ordnance. As directed, quantitative analyses were made to determine the major constituents of the lead cores. These were found to be as follows:

	F. A. cartridge.	U. M. C. cartridge.
Lead.....	Per cent. 96.21	Per cent. 95.60
Antimony.....	None.	1.95
Tin.....	3.10	1.45

The effect of the addition of tin to lead is to increase the toughness of the metal; the effect of the addition of antimony is to make the lead brittle. The differences in the composition of the lead cores of these bullets correspond to what are said to be the differences in the shop practice at Frankford Arsenal and the Union Metallic Cartridge Company's works by casting, for which process the presence of antimony is unobjectionable. The usual traces of copper and bismuth are present in both cases.

OSWIN W. WILLCOX,  
Assistant Chemist.

Examined:

T. C. DICKSON,  
Major, Ordnance Department, United States Army.

Also, analysis made at Frankford Arsenal of bullets manufactured there March 24, 1906.

Hearings, volume 3, page 3324:

FRANKFORD ARSENAL,  
Philadelphia, Pa., December 12, 1907.

SIR: 1. Referring to first indorsement, O. O. 30803-135, December 10, 1907, on the subject of antimony in bullet cores, I have the honor to report that the quantitative analysis referred to in the last paragraph of that indorsement has been completed.

2. The composition of slugs taken from ball cartridges, model 1903, manufactured at Frankford Arsenal March 24, 1906, is as follows:

	Per cent.
Lead.....	96.85
Tin.....	2.89
Antimony.....	.26

3. The composition of slugs taken from ball cartridges, model 1903, manufactured at Frankford Arsenal December 26, 1905, is as follows:

	Per cent.
Lead.....	96.90
Tin.....	2.82
Antimony.....	.28

4. The proportions prescribed are 30 parts lead to 1 part tin, or lead 96.77 per cent and tin 3.23 per cent. Antimony is nearly always found in commercial lead and tin.

Very respectfully,

FRANK HEATH,  
Colonel, Ordnance Department,  
United States Army, Commanding.

The CHIEF OF ORDNANCE, UNITED STATES ARMY,  
Washington, D. C.

Also, analysis of bullets manufactured by the Union Metallic Cartridge Company.

Hearings, volume 3, page 3321:

CARD ORDER C.—SAMPLE NO. 1948.

FRANKFORD ARSENAL,  
Philadelphia, Pa., January 26, 1906.

SIR: The lead alloy made by the U. M. C. Company, submitted for analysis by Capt. S. Hof, contains—

	Per cent.
Lead.....	94.87
Antimony.....	3.29
Tin.....	1.68
Total.....	99.84

Respectfully,

W. J. WILLIAMS, F. I. C., Chemist.

The COMMANDING OFFICER, Frankford Arsenal.  
(Through Capt. S. Hof, Ordnance Department.)

Also, another analysis made at the Frankford Arsenal of bullets from ammunition of the character issued to the Twenty-fifth Infantry at Fort Niobrara.

Hearings, volume 3, page 3328:

F. A. L. 8061—SAMPLES 2553 AND 2554.

FRANKFORD ARSENAL,  
Philadelphia, Pa., December 17, 1907.

SIR: I have the honor to make the following report on the cores of two bullets received from the Ordnance Office, caliber 0.30, model of 1903:

	2553 (case marked "F. A. I. '06").	2554 ("U. M. C. 12. '05").
Lead.....	Per cent. 96.58	Per cent. 95.46
Tin.....	3.26	3.35
Antimony.....	0.19	1.16

Respectfully,

W. J. WILLIAMS, F. I. C., Chemist.

The COMMANDING OFFICER, Frankford Arsenal.  
(Through Maj. S. Hof, Ordnance Department.)

Now, no antimony except the usual trace of from ten one-hundredths to fifteen one-hundredths per cent found in commercial lead has ever been traced to a bullet made at the Frankford Arsenal.

I have included here numerous analyses of bullets manufactured at all these places by the Government experts. They were made by the Geological Survey or at the Frankford Arsenal, and they all attest the same fact and prove conclusively that the Frankford Arsenal shell exploded, picked up in the alley in the vicinity of the fort, did not belong with the Union Metallic bullet picked out of the house in the immediate vicinity. And in the entire block from Fifteenth street to Fourteenth street, on which a great part of the firing was done, no other shells have been shown in evidence anywhere than this "bunch" of shells picked up by Captain Macklin.

These several analyses made by the Government experts show conclusively that the bullets found in the Cowen, Yturria, and Garza houses, near which the bunch of Frankford Arsenal shells were found, did not belong to the Frankford Arsenal shells, and thus reveals more clearly that the scattered shells about the streets of Brownsville were fired at some other place, undoubtedly at Fort Niobrara, and were a part of and in furtherance of the conspiracy to get rid of the negro soldiers and to fix on them "the shooting up of the city."

I will not refer further to shells, and so forth, at this time, as I shall have occasion to discuss this subject in connection with the examination of the guns and shells by the Government experts at the Springfield Armory.

The bullets taken from the houses on the route followed by the raiders, and undoubtedly used during the raid, remain to be accounted for, but I think it the better course to take up the further discussion of shells and bullets in connection with the guns and their examination by the Government experts.

The Springfield rifles, model 1903, which it is charged were used by the raiders, were distributed to the battalion of the Twenty-fifth Infantry, Companies B, C, and D, at Fort Niobrara April, 1906, and were in use at that post both in target practice and company exercise during the remainder of their stay at that post—the latter part of July, 1906—when the command was moved to Fort Brown. During the stay at Fort Brown target practice was not engaged in—the range was at Point Isabel, some 20 or more miles away—and I find no evidence that ammunition of any character was expended after their arrival at this post, and there is abundant testimony that at least in one of the companies the ball-cartridge ammunition was taken up and guard cartridge, or limited-range ammunition, substituted. We need give but little consideration to the large number of guns in the hands of the soldiers. The experts at the Springfield Armory—Lieutenant Hawkins, of the Ordnance Department, and Mr. Spooner, inspector—have located the shell exhibits before the committee, thirty-nine in number, as having been fired from guns Nos. 41019, 45683, 42288, and 45624, all belonging or assigned to Company B, said company being the one that brought from Fort Niobrara the box of exploded cartridges, the case heretofore alluded to in the testimony of First Sergt. Mingo Sanders.

Gun numbered 41019 was assigned to Ernest English.

Gun numbered 42288 was assigned to Thomas Taylor.

Gun numbered 45624 was assigned to Joseph Wilson.

Gun numbered 45683 was assigned to William Blaney.

Hearings, volume 2, pages 1318-1319:

IV. The above cartridges and cartridge cases were all carefully examined under a powerful microscope and also under jewelers' eyeglasses of varying powers. This examination showed that some of these cartridges had been fired from the same rifles, viz:

Reference No.

309  
312  
316  
321  
324  
326  
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GROUP I.—Fired in rifle No. 41019, Company B, Twenty-fifth Infantry. Reference number of rifle and cartridge case from same, No. 95.

GROUP II.—Fired in rifle No. 45683, Company B, Twenty-fifth Infantry. Reference number of rifle and cartridge case from same, No. 81.

GROUP III.—Fired in rifle No. 42288, Company B, Twenty-fifth Infantry. Reference number of rifle and cartridge case from same, No. 135.

GROUP IV.—Probably fired in rifle No. 46524, Company B, Twenty-fifth Infantry. Reference number of rifle and cartridge case from same, No. 126.



Refer-  
ence No.

305 } GROUP V.—These cartridges were not fired, and have insufficient  
313 } gun marks to identify them with any particular rifle. Num-  
314 } ber 339 has a slight striker impact, but this imprint is so slight  
315 } (due to the depressed primer) that it is of no use for purposes  
338 } of identification.  
339 }

All of these men belonged to Company B, all of these guns were distributed to that company, and a box of empty cartridges brought from Fort Niobrara was deposited on the back porch of this company's barracks when they reached Fort Brown. This examination seems to have located this firing—if it has located it at all—within the ranks of Company B; and these thirty-nine shells are the only exhibit furnished by Mayor Combe or the district attorney or the War Department or anybody else to your committee.

The three guns assigned to English, Taylor, and Wilson, if the testimony of the noncommissioned officers in charge is correct, were securely locked in the gun racks, which were not opened until after the firing ceased—the universal evidence of both officers and men—consequently no shells could have been fired from those guns in the streets of Brownsville that night, unless collusion between noncommissioned officers and men can be established, and of this there is not a particle of evidence to warrant.

Gun No. 45683 was assigned to Sergt. William Blaney at Fort Niobrara when first received and distributed to the men and remained in his possession, or as his gun, until the expiration of his term of enlistment. He reenlisted June 8, 1906, when he accepted a furlough and was absent from Fort Brown at the time of the affray. The night of his departure he turned over the keys of the storeroom to his successor, Sergt. Walker McCurdy, calling his attention to the fact that his rifle was there. McCurdy testified (p. 1658, vol. 3, Hearings) that he inserted in the chamber a slip of paper with "William Blaney" written upon it, to keep him from issuing it to anybody else; that the gun was in his charge until Blaney's return to the command at Fort Reno; that he placed said gun in the arm chest at Fort Niobrara; that it was in the arm chest on the night of August 13, 1906, and that when the gun was returned to Blaney at El Reno the slip of paper marked with his name still remained in the chamber.

Mr. SMITH of Michigan. Who testified about the paper being placed in the gun?

Mr. BULKELEY. The quartermaster's sergeant, who had charge of the guns after Blaney reenlisted and took a furlough and went away. The quartermaster's sergeant took the gun into the storeroom, inserted a piece of paper in the chamber, and then he delivered it over to Blaney at El Reno when he came back from his furlough, where the troops were sent after the affray, and he found this same slip of paper in the chamber of the gun.

Mr. PILES. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Washington?

Mr. BULKELEY. Certainly.

Mr. PILES. I want to ask the Senator from Connecticut whether this quartermaster's sergeant is a colored man?

Mr. BULKELEY. He was a member of the Twenty-fifth Infantry.

Mr. PILES. I was in doubt about it.

Mr. SMITH of Michigan. And he put the paper in the gun?

Mr. BULKELEY. Yes. He had served four or five enlistments; had been discharged at the close of each enlistment with a good character, such as to entitle him to reenlist again, and the Government was glad to retain him in its service. It was testified to by General Burt, retired, who had once commanded these troops, and by all his officers, that he was a man entitled to every confidence.

I can not refrain from repeating here what was said by an old Army officer, who for twenty years commanded the Twenty-fifth Infantry—and he said it with tears rolling down his cheeks—that he had intrusted, in his absence, his wife and family unattended to the care of these men while he was engaged in a march of four or five hundred miles over the plains and the desert.

Lieutenant Lawrason describes the condition of the arm chest when he inspected the same on the morning of the 14th, after the affray. I will here append, at length, his testimony, together with that of Sergeants Blaney and McCurdy.

Hearings, volume 2, page 1658 (McCurdy's testimony):

Q. Who had been quartermaster-sergeant prior to that date?—A. Sergt. William Blaney.

Q. What book is that in front of you there? See if you recognize it.—A. This is the company's property book, sir.

Q. The company property book of Company B?—A. Yes, sir.

Q. Will you turn to that and see what gun Sergeant Blaney had assigned to him, according to that book, when these new Springfield rifles were issued?—A. (Examining book.) I think it was 45683.

Q. 45683?—A. Yes, sir.

Q. Now, it has been testified to, I believe, that Sergeant Blaney was absent on furlough. When did he go away on furlough?—A. It was about the same time I was made quartermaster-sergeant—about the 9th or 10th of June.

Q. That is, you succeeded him when he went away on furlough?—A. Yes, sir.

Q. Had he returned while you were yet at Brownsville? When did he return?—A. He returned at El Reno.

Q. He was not with you at Fort Brown at all?—A. No, sir.

Q. What was done with his gun when he left to go on furlough the 9th of June, or whatever date it was?—A. He took it up and packed it away.

Q. He turned it in?—A. No, sir; he turned in his own rifle. He will tell you himself that when he returned there was a slip of paper put in the chamber to show whose rifle it was, to keep me from issuing it to anyone else.

Q. Who put that in there?—A. I put it in there myself.

Q. What was on that slip of paper?—A. "William Blaney."

Q. Now, when he returned, were you still with the company?—A. Yes, sir.

Q. At El Reno?—A. Yes, sir.

Q. And you were still quartermaster-sergeant?—A. Yes, sir.

Q. And did you continue as quartermaster-sergeant?—A. Until I was discharged, sir.

Q. Until you were discharged?—A. Yes, sir.

Q. Now, what was done in the matter of providing Sergeant Blaney with a gun?—A. I gave him his same rifle back.

Q. You gave him back that same rifle?—A. Yes, sir.

Hearings, vol. 2, pp. 1748-1749 (Blaney's testimony):

Q. Were you with the regiment at Fort Niobrara?—A. Yes, sir.

Q. Were you with the regiment at the time when the new Springfield rifles were issued to the regiment?—A. Yes, sir.

Q. What position in the company did you hold at that time?—A. I was company quartermaster-sergeant.

Q. You were familiar with the property book of Company B?—A. Yes, sir.

Q. Was a rifle issued to you at that time?—A. Yes, sir.

Q. You yourself were then the quartermaster-sergeant?—A. Yes, sir. Please look at the book I now hand you and tell me what it is.—A. It is B Company's property book.

Q. Turn to the account of the men with the rifles and tell me what that property book shows as to your own rifle.—A. For the present?

Q. Just tell me what it shows. Not as to the present, but as to the new Springfield rifle which was issued at Fort Niobrara in April, I believe it was, 1906. I want the number of your gun.—A. Yes; this book gives me one rifle, and it is numbered.

Q. What number?—A. 45683.

Q. Is that rifle receipted for by you?—A. Yes, sir.

Q. Was it issued to you as indicated there?—A. Yes; it was.

Q. Is that the rifle, now that you see the number, that you had while you were at Fort Niobrara?—A. Yes, sir.

Q. What time did you leave the company at Fort Niobrara to go on your furlough?—A. On the 8th of June.

Q. You left some time before the battalion went to Fort Brown?—A. Yes, sir.

Q. Did you keep that rifle in your possession until that time?—A. Yes, sir; I did.

Q. Did you or not use that rifle at Fort Niobrara on target range in target firing?—A. Yes; I used it on the 8th day of June—on the very day that I left.

Q. On the day that you left what did you do with your gun?—A. I took it in the storeroom after I got through firing and kept it in there.

Q. Who succeeded you as quartermaster-sergeant?—A. Walker McCurdy.

Q. Was he the quartermaster-sergeant and did you turn the gun over to him that night, or what did you do with it?—A. No; I took it in the storeroom myself. I had the keys, and I did not turn the keys over to him until that evening. I fired that morning, but I think it was in the evening when I turned the keys over to him.

Q. When did you next see that rifle? Did you call his attention to your own rifle or not before you left there as being turned into the storeroom?—A. Yes, sir.

Q. State whether or not your rifle was marked in any way, if you know, besides the number on it.—A. No, sir.

Q. I only want your recollection.—A. No; not as I know of.

Q. You turned it over to Sergeant McCurdy, or I mean you left it in the storeroom and McCurdy succeeded you as quartermaster-sergeant?—A. Yes, sir.

Q. And he came at once into possession of it?—A. Yes, sir.

Q. When did you next see your rifle?—A. At Fort Reno.

Q. You did not return to your company until it arrived at Fort Reno?—A. No.

Hearings, volume 2, pages 1581, 1582, 1583 (Lawrason's testimony):

Q. Who was in charge of the storehouse, or storeroom, whichever you call it?—A. Quartermaster-Sergeant Walker McCurdy.

Q. Was he, also, an old sergeant?—A. Yes, sir; he was an old sergeant of Company B.

Q. Was he or not a reliable and truthful man?—A. I always believed him to be such, sir.

Q. He had been in the service many years, had he not?—A. Yes, sir; he had.

Q. And had everybody's confidence as a good soldier and a faithful noncommissioned officer?—A. Yes, sir.

Q. He was the quartermaster-sergeant; as quartermaster-sergeant what was his duty with respect to the surplus rifles and surplus ammunition—I mean surplus in the sense that it was not in the hands of the men?—A. He was accountable for it, and it was his business to keep it locked up.

Q. You went to the storeroom after you locked up the rifles; who went with you to the storeroom?—A. The quartermaster-sergeant.

Q. Sergeant McCurdy?—A. Yes, sir.

Q. What did you do, and what did you tell him, and in what condition did you find the room; was it locked or unlocked when you went to it?—A. It was locked and he opened it. He took out a bunch of keys, as I recollect it, and fumbled around and got the right key and unlocked the door. The storeroom was very small, and we could not put all of our quartermaster property in there, and there was some confusion in the way in which the stuff was piled. We had to remove a lot of company property.

Q. I will come to that in a minute. What did you tell Sergeant McCurdy you wanted in the storeroom when you went there; did you tell him or not what you wanted to do until you got into the storeroom?—A. No, sir; when I got into the storeroom I told him that I wanted to see the rifles that he had in the storeroom.

Q. That is, rifles that he had in his possession?—A. Yes, sir.

Q. Did you know how many rifles he had in his possession at the time?—A. I did, by referring to the company property book which was kept there.

Q. We will speak about that presently. Now, go on and state what you did and what he did when you told him.—A. He told me that the rifles were locked up in the arm chests. I told him to open them, and he opened one full arm chest that contained ten rifles, and also opened another that, I believe, contained two or three rifles and several old company shotguns.

Q. Now, before you opened the arm chests, let me ask you whether or not they were easy to get at, or whether there was anything on top of them?—A. No, sir; they were not easy to get at. As I recollect, we removed considerable property before we got the arm chests out and got room to unscrew the lids.

Q. What kind of property was this?—A. Iron quartermaster bunks and, I believe, some iron uprights to hold mosquito bars—T-shaped things.

Q. They had been piled on top of these arm chests, had they?—A. Yes, sir; and were standing against the wall, between us and the arm chests.

Q. When had you last before that seen these arm chests, and where?—A. I had seen them at Fort Niobrara, Nebr., before shipment, and when they were unloaded from the wagons and placed in the storehouse at Fort Brown.

Q. Where were these extra guns placed in these arm chests, whether at Fort Niobrara or Fort Brown, or where?—A. They were placed in the arm chests at Fort Niobrara.

Q. Do you remember seeing the guns—rifles—put in the arm chests and the arm chests closed up for shipment at Fort Niobrara?—A. I do not believe I was present when the property was boxed up. It was boxed up sometime before our departure, and Captain Shattuck was in command of the company at that time.

Q. You have told us in what condition you found the chests as to other property being piled on top; this property was removed, was it, from the tops of the chests?—A. Yes, sir.

Q. And then were the chests opened, or not?—A. They were opened under my supervision and the arms counted.

Q. State in what condition you found the inside of those chests, as to the arms.—A. The arms were placed in the proper grooves for them, and they were battened down, or held down by cleats that fit in the boxes, to prevent their rattling around during shipment.

Q. They had been fixed that way before they had left Niobrara?—A. Yes, sir.

Q. And were they in that same condition when you opened them that night?—A. They were in the same condition, sir.

Q. Did you count the rifles when they were opened up?—A. Yes, sir; I counted them.

Q. I will ask you another question, whether or not, before these rifles were shipped from Fort Niobrara, they were coated with cosmoline oil or any other kind of oil?—A. I believe they were coated with cosmoline oil at the time I looked at them at Fort Brown.

Q. When you looked at them was there any indication that they had been disturbed in any way whatever since they had been boxed up at Fort Niobrara?—A. No, sir; there was not; I did not take out all the rifles; I could count them without taking them out of the boxes; I picked up one or two from the top.

Q. And you did count the rifles in both boxes?—A. Yes, sir.

Q. And you remember that the requisite number of rifles were there, added to the other rifles that you found in the racks, and that you counted as away from there, to make up the number of 70?—A. Yes, sir.

Q. There was not a rifle missing, was there?—A. No, sir.

Q. Now, can you tell us anything about what rifles were in those boxes—I mean whether any of those rifles had been assigned at any time previously to anybody, and if so, to whom, in the absence of the property book, or would you rather have the property book before you go into that?—A. I can state without the property book that quite a number of those rifles that were packed had been used in target firing at Fort Niobrara, Nebr.

Q. I wish that you would tell me, as nearly as you can, just what rifles, giving me the names of the men who carried them—we will get the numbers later—were in that box that had been used in target practice or in any way by men to whom they had been assigned before you left Fort Niobrara for Fort Brown.—A. Well, Sergeant Blaney had taken part in target practice, and his rifle was in the box.

Q. Tell me why he was not with you and why his rifle was in the box, before we pass that.—A. He was not with us because he was on furlough.

Q. How long a furlough did he have?—A. I believe he had two months, sir; I am not positive.

Q. Well, he had reenlisted, had he not? He had a furlough on that account?—A. Reenlisted on the expiration of term of enlistment and then been given a furlough.

Q. And before he left on furlough he turned his rifle in?—A. Yes, sir.

Q. And that was in the box?—A. Yes, sir.

Q. He had not returned from his furlough?—A. No, sir; he had not.

Mr. PILES. Mr. President—

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Washington?

Mr. BULKELEY. Certainly.

Mr. PILES. I wish to inquire of the Senator from Connecticut whether it is charged that this gun bearing the name of William Blaney, in which the slip of paper was inserted, was one of the guns used on the night of this raid?

Mr. BULKELEY. It was claimed that it was identified as such by the experts of the Springfield Armory, who located eight or nine or ten shells as having been fired from this gun.

Mr. PILES. I just wanted to bring out that point.

Mr. BULKELEY. There is some claim that this gun, when examined at the Springfield Armory, bore marks of recent firing; at least it was dirty; but Blaney himself explained that.

He said that on the morning he turned in his gun he had been to target practice on the local range in the fort with reduced ammunition, and, as he says, "I coated it with cosmoline oil."

Lieutenant Lawrason the morning after the affray, when he was ordered by Major Penrose to inspect and account for his rifles, first examined those in the gun rack and then went to the storeroom. I read from his testimony on pages 1585-1586:

Q. You made this examination, you and Sergeant McCurdy, your quartermaster-sergeant, and you thoroughly satisfied yourself, did you, that those boxes had not been opened since they left Niobrara?—A. Yes, sir.

Q. And that every gun was in there that was placed there before you left Niobrara?—A. I believe such to be the case, sir.

Q. And that not only from the counting of the guns, but from the general appearance, the undisturbed appearance, of the condition in which you found the guns?—A. Yes, sir.

Q. And if the boxes had been opened it would have involved the removal of all this baggage which you found on top of them. Before we leave that I will ask you another question. You saw the guns put in the racks and locked up. How many keys were there to the gun racks by which those gun racks might have been opened that night?—A. There was only one key, I believe, to each lock. I know that on the bunch of keys the key that would unlock rack No. 1, for instance, would not unlock rack No. 2.

A careful microscopic examination of the marks upon the shells made by the firing pins, when compared with the marks upon shells fired from the same guns—all the guns belonging to this battalion which they had had at Fort Niobrara, after they were sent to Fort Reno, were dispatched to the Springfield Armory for the purpose of these microscopic experiments—were found to be so exactly similar that the experts found little difficulty in locating the shells or exhibits from the committee in the four guns which I have just considered. The conclusions reached by the experts—Lieutenant Hawkins and Inspector Spooner—were so convincing that they were never questioned either by the committee or any parties interested; but instead of tending to show the guilt of the soldiers, these mute utterances of the marks upon the empty shells attested their absolute innocence—in view of the position of those guns the night of August 13, especially the fourth gun, which, beyond any question, could not have been in the hands of the soldiers. If these views are correct, the combination of the shells and bullets necessary to establish the finding of a majority of your committee, that these shells and bullets "in combination" could only have been fired from a Springfield rifle, model 1903, falls to the ground.

General Crozier, the chief of the Ordnance Department, has been interested in the subject, and through his orders all these examinations were made. General Crozier says, Hearings, volume 3, page 2854:

By Senator FORAKER:

Q. That is to say, these bullets are apparently just such bullets as you would expect to find fired out of Springfield cartridges?—A. Yes, sir.

Q. And assuming that these empty shells were the shells that held the bullets, then you would assume that it was a Springfield rifle from which they were fired?—A. Yes, sir.

I have already, I think, to the satisfaction of everyone, if the testimony is correct—and there is nothing to contradict it—separated absolutely the shells from the bullets. The shells came from the Frankford Arsenal and the bullets from the Union Metallic Cartridge Company, both of which make completed cartridges. A shell manufactured by the Frankford Arsenal, found in a house, would not, under any human probability, be associated with a bullet manufactured by the Union Metallic Cartridge Company. They do not do business that way. Continuing, General Crozier testified:

Q. But, aside from that premise, they might have been fired out of either a Krag or a Springfield?—A. Yes, sir.

Q. They might have been fired out of a Krag carbine, also?—A. Yes, sir.

Q. That is to say, the Krag carbine and the Krag rifle and the Springfield rifle all have the same number of lands?—A. Yes, sir; and the bullet is the same for each.

Q. Each has four lands, and the bullet is the same?—A. Yes, sir; and the bullet is the same.

By Senator OVERMAN:

Q. You are only speaking as to the bullet now?—A. Yes, sir.

In commenting upon the examination of the guns, shells, and bullets examined by the experts of the Ordnance Department at the Springfield Armory, the facts established and the conclusions reached, the General, in his annual report for the fiscal year ending June 30, 1907, page 36, in discussing these microscopic examinations, distinguishing marks, and the location of these shells in particular guns, says, and says truthfully and without bias:

The bearing of these facts upon the identity of the persons doing the firing and upon the time when the cases and bullets were fired in the guns is not a concern of this Department.

And they did not attempt to solve it. Under all the examinations of the Ordnance Department the evidence, putting all the circumstances of this investigation together, proves conclusively that these shells were, as these marks indicate beyond any man-



ner of question, fired upon the target grounds at Fort Niobrara. It is remarkable, in connection with this examination, that all the shells located were in the guns of Company B, who brought from Fort Niobrara the box of empty shells, or cases, heretofore referred to.

General Crozier testifies (p. 2854) that the bullets taken from the houses might have been fired from a Krag, a Krag carbine, or a Springfield, and if fired from any one of the three would bear the marks of the same number of lands—the Krag and the Krag carbine were not unknown guns in the locality of Brownsville.

The difficulty in identifying bullets used in different rifles is best illustrated by referring to the testimony of Captain Ely, Twenty-sixth Infantry, to whom was exhibited two perfect cartridges, and he was asked to tell which was the Krag and which was the Springfield. After a careful examination he selected the Krag for the Springfield bullet.

I append his testimony, Hearings, volume 3, pages 2696-2697:

A. (Continuing.) If I was going to judge which of the two was the more probable, I would say more probably the new Springfield, from what seems to me to be the more pointed nose of the bullets.

Q. Those three bullets when shown to you seemed to be Springfield bullets?—A. Yes, sir.

Q. And they were all the same size and all the same general appearance except as they were disfigured by meeting with obstructions?—A. Yes, sir.

Q. And they seemed to you to have a more pointed nose than the Krag bullets?—A. They seemed to, although I would not say that it was impossible that they should be Krags.

Q. Now, Captain, is there any difference whatever in the actual form and figure of the two bullets?—A. I believe so; yes, sir.

Q. You think there is?—A. Yes, sir; I have taken them and compared them. I have taken the cartridges and compared the two, and it seems to me that there is quite a little difference.

Q. Is that plainly perceptible?—A. No, sir; it is not plainly perceptible.

Q. It requires very close scrutiny when the bullets are in the cartridges, before they have been fired?—A. Yes, sir.

Q. To detect any difference between them?—A. Yes, sir; it does.

Q. And is it not next to impossible to detect any difference there may be after they have been fired, if they had gone through any obstruction?—A. Well, I would hardly say next to impossible, but it is difficult.

Q. Of the two bullets here which I show you, can you tell which is which? One is a Krag and the other is a Springfield.—A. I should say this was the Springfield.

Q. See if it is.—A. No, sir; it is not.

Q. That is the Krag, isn't it?—A. Yes, sir.

Q. That shows that you may be mistaken about it, doesn't it, as to the appearance?—A. Yes, sir.

It is hardly obligatory, Mr. President, in view of the conclusion I have reached in the matter of the shells and the bullets, but I think it proper, in view of the testimony in relation to the composition of the bullets, to state that up to the time of the discovery upon analysis by a Government expert of the Geological Survey it had been expressly claimed that no steel-jacketed bullet had been issued to the Army containing antimony. (See letter of General Crozier, Chief of Ordnance.)

Hearings, volume 3, page 3309:

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ORDNANCE,  
Washington, December 6, 1907.

Hon. JOS. B. FORAKER,  
United States Senate.

SIR: You are informed that the history of jacketed bullets for .30 caliber small arms manufactured by this Department is as follows:

Various experimental compositions were tried, including some in which the core was composed of 97 parts lead and 3 parts antimony, but these were never issued to the service.

The first ammunition with jacketed bullets, issued to the service in 1894, had the core of the bullet composed of 7 parts lead and 1 part tin, and the jacket of German silver. In the same year bullets were also issued with a cupro-nickel steel jacket, and the same core composition as above.

In May, 1898, cupro-nickel jackets were also used.

In the fall of 1900 cupro-nickel steel jackets were abandoned, and cupro-nickel alone has since been used.

On December 16, 1902, the composition of the core of the bullet was changed to 27 parts lead to 1 of tin.

On March 11, 1903, it was changed to 20 parts lead to 1 part tin.

On October 24, 1904, it was changed to 16 parts lead to 1 of tin, and on March 18, 1905, it was changed to 36 parts lead to 1 of tin. The last mentioned has continued to be the composition to the present time.

The changes were made to keep the weight of the bullet constant, and were coincident with changes in the thickness of the jacket. It is, of course, possible that slight variations from prescribed proportions may have been obtained in manufacture.

The cupro-nickel jacket is composed of 85 per cent copper and 15 per cent nickel.

The history of the bullet given above is for the Krag rifle ammunition up to March 11, 1903, since which date it applies to the bullets for both the Krag and the model of 1903 rifles, the same bullet being used in both.

2. The composition given for the guard cartridge in the handbook for the United States magazine rifle, model of 1903, caliber .30, page 46, is in error in giving the composition of the bullet, which should be 90 parts lead, 8.5 parts tin, and 1.5 parts antimony.

Very respectfully,

WILLIAM CROZIER,  
Brigadier-General, Chief of Ordnance.

And the Union Metallic Cartridge Company, who had manufactured bullets for the Government, had likewise insisted that they had never used antimony (see the following letters):

Hearings, volume 3, pages 3336-3337:

THE UNION METALLIC CARTRIDGE COMPANY,  
Bridgeport, Conn., June 13, 1907.

DEAR SIR: Replying to your letter of the 12th instant, making inquiry concerning the composition of the bullets furnished with the different cartridges, as enumerated, wish to advise as follows:

Springfield, model 1903 bullet—36 parts lead, 1 part tin.

Unjacketed guard cartridge bullet—9 parts lead, 1 part tin.

Krag metal-cased bullet—20 parts lead, 1 part antimony.

Trusting this information will be of service to you, we are,

Yours, truly,

THE UNION METALLIC CARTRIDGE CO.,

By J. ORCUTT, Manager and Superintendent.

Hon. JOSEPH B. FORAKER,  
United States Senate, Washington, D. C.

THE UNION METALLIC CARTRIDGE COMPANY,  
Bridgeport, Conn., December 6, 1907.

DEAR SIR: With reference to our telephone conversation of this morning, it is my understanding that you desire to ascertain what particular bullets are represented by the mixtures given, which were as follows:

	Lead.	Tin.	Antimony.
	Per cent.	Per cent.	Per cent.
No. 1.....	95.70	2.02	1.97
No. 2.....	95.59	2.11	1.98
No. 3.....	96.36	2.05	1.29

While these mixtures do not represent any bullet which we manufacture, they come the nearest to a .30 Government, model 1898, bullet.

We trust that this information may be of service to you, and remain,

Yours, truly,

THE UNION METALLIC CARTRIDGE CO.,

By J. ORCUTT, Manager and Superintendent.

Hon. JOSEPH B. FORAKER,  
United States Senate, Washington, D. C.

THE UNION METALLIC CARTRIDGE CO.,  
Bridgeport, Conn., December 19, 1907.

DEAR SIR: Replying to your telephone communication of the 7th instant, with reference to the composition of the Springfield bullets, 1903 model, wish to advise that they were made in accordance with the specifications furnished by the Government.

We refer to blueprint B-582, last date of revision being March 27, 1905, describing "Ball cartridges, United States magazine rifle, model 1903," as follows:

"Bullet: Weight, 220 grains; core, 36 parts lead, 1 part tin (about)."

Yours, truly,

THE UNION METALLIC CARTRIDGE CO.,

By J. ORCUTT, Manager and Superintendent.

Hon. JOSEPH B. FORAKER,  
United States Senate, Washington, D. C.

The letters were all written, as testified by the superintendent, after a careful examination of the records at the factory. When it became necessary to connect the soldiers with the raid through the examination used, it also became necessary to prove the incorrectness of the reiterated statements of both the Ordnance Department and the contractors. After a visit to Washington and absorbing the breath of official atmosphere, the president and the inspector of the Union Metallic Cartridge Company had recalled to their recollection—without a record before them—that in filling one contract, and in violation of its provisions, they had manufactured a small part of the alloy of the composition as found by the chemical analysis; and it was also claimed that this particular lot of cartridges had, by chance, fallen into the hands of the Twenty-fifth Infantry at Fort Niobrara; but recollect, Senators, that the shells found by Captain Macklin at the mouth of the alley the morning after the firing, almost before daylight, did not belong with the bullets made by the Union Metallic Cartridge Company. The bullet taken from the post in front of Crixell's saloon did not prove to be a steel-jacketed bullet, such as were in use by the troops, neither was it a guard-cartridge bullet, which also were of different composition from that disclosed by the analysis.

COURSE OF BULLETS.

For the purpose of investigation, and to ascertain, if possible, the position from which the bullets found in the houses were fired, Lieutenant Leckie was detailed by General McCaskey, department commander, and visited Brownsville and made a critical and expert examination in the case of every house fired upon and reached the conclusion that all the shots fired into houses in the near vicinity of the reservation were fired from the street, and could not possibly have been fired from the wall of the reservation or from the porch of the barracks; but another officer sent for the like purpose reached an entirely different conclusion, and I have no doubt if we had continued to send officers there up to the present day each one looking through a gunshot hole, one or two in line, depending upon

his own height, possibly, or his own abilities, or the glance of his eye, could locate a bullet and its course in almost any direction that was wanted. So I am not going to waste any time on that part of it.

#### MAJOR PENROSE'S CHANGE OF OPINION.

After listening to the evidence given at the Penrose court-martial and reading the evidence presented to your committee, Major Penrose renewed his first impression that his command was not involved in the affray, as testified by him.

Hearings, volume 3, pages 3025-3026:

Q. I want to know fully what produced this change in your mind, in your opinion, as to who did that shooting?—A. I am trying to give it to you, Senator. There was another question or two asked of me, if you will remember.

Q. I want you to explain it fully in your own way.—A. Yes, sir. Well, as I say, the darkness of this night and the finding of those shells—my opinion commenced to change at that time. Then there was the testimony that was produced before this committee as to the experiment that was made at the Frankford Arsenal, where they found that eleven shells were fired from one gun.

Senator FORAKER. A Springfield?

A. One Springfield rifle that had been locked up in the arms chest at Fort Niobrara and was not opened until the morning of the 14th of August. They claim that eleven—I think it is eleven—of those shells, or eleven shells, fired from that gun, were found in the streets of Brownsville. Those shells were brought down from Fort Niobrara to Brownsville. They were open, on the back porch of B Company. They were open there several days, I don't remember how long. I can see no way in the world that those shells could have been fired in the streets of Brownsville. There is another thing: I think they were taken out there and put there. That is the reason that I have changed my opinion, sir.

By Senator LODGE:

Q. You think those shells were put all over the town in order to give the idea that the soldiers did the shooting?—A. I think certainly those eleven shells were, sir.

Q. Well, but it is in testimony and, I think, uncontradicted, that shells were picked up at a great many points?—A. Yes, sir; so I understand.

Q. Your idea is that they must have been put there, at all those points?—A. That is my idea of it, sir.

By Senator OVERMAN:

Q. Do you think those freshly fired shells that were found there at the mouth of the alley were brought down from Niobrara?—A. I think so now.

Q. And put there?—A. I believe they were, sir.

Q. Yet you say they were freshly fired?—A. They had the appearance to me. They had only been fired a month before.

By Senator TALIAFERRO:

Q. Who do you think brought them from Niobrara?—A. B Company brought them down.

Q. Who do you think distributed them in the streets?—A. I don't know, sir, unless some of the people of Brownsville.

Q. How did they get out of the custody of B Company?—A. They were open on the back porch of B Company, and were left there for several days, Senator—this box was. I think the testimony so shows here.

Q. They were at least more accessible to the members of B Company than they were to the public at large?—A. Yes, sir; that would be very possible—that they were.

Senator SCOTT. I should like to hear the answer to Senator Pettus's question, if I can get it.

By the CHAIRMAN:

Q. If you have anything further to say in answer to the question of the Senator from Alabama, you will, of course, proceed with it and make full answer.—A. I should state in connection with that that there was the behavior of the men before this shooting occurred. They had been an excellent lot of men. We had never had any trouble with them; they were well disciplined, well drilled, easy to handle. From the time that this shooting occurred none of them was permitted to leave Fort Brown at all. We took them up to Fort Reno, Okla., and there they were confined absolutely to the limits of the post—the post proper. They were not permitted to leave it under any circumstances. I gave them extra drills, extra guard, and had them working at fatigue whenever they were not drilling or on guard, the whole day long. Those men took all that without a murmur or a complaint of any kind. There were five of the men who disobeyed that order and went to town. They were each tried, dishonorably discharged, and sentenced to eighteen months' confinement at the military prison at Fort Leavenworth, Kans., and that was reduced by the reviewing authority to six months. Those five exceptions were the only ones that disobeyed any of the orders that were issued at all. Finally the order came for their discharge. They were discharged at that post, a half a company at a time. They were paid off. They had anywhere from fifty or sixty dollars to, some of them, twelve or thirteen hundred dollars. They went to this little town, which was full of temptations, and, as I stated before, there was not a single man found drunk, nor was there a disturbance of any kind or character reported of these men, and I talked with the chief of police over the telephone frequently. Now, taking into consideration the conduct of these men both before and afterwards, and what I have before stated, leads me to believe that the men did not do that shooting.

The Senator from Idaho has noted the absence of a number of men from the post that night, apparently unaccounted for (and my attention has been called to the fact), when apparently all of the men are reported present. There are some Senators in this Chamber who are familiar from their own experience with the usual report of a first sergeant after a roll call. They have heard the report made after a great battle, in which many were unaccounted for, except as they lay prone on the battlefield and could answer to but one call. The usual report of a first sergeant is, "All present or accounted for," and he accounts for the men who are absent either on a pass, as it is

his duty to know, detailed for guard duty, or located elsewhere. And these men, the record shows, as I find it in the Senator's speech, reading from the RECORD:

I call attention to another matter in this affair. The record shows that—

Private Lee stayed the night at a house in the city. Was out that night. (S. Doc., p. 128.)

Private E. Johnson (p. 132) stayed that night in town with his wife.

Private G. Johnson (p. 120) was sleeping at the corral and knew nothing about the matter until he was told about it afterwards.

Private John Streater (p. 134) was asleep in the corral. Never knew anything about it.

Private G. Thomas (p. 117) was at a colored woman's house in Brownsville and did not return until the next morning.

Private Hardin (p. 131) was absent from the quarters, sleeping at Lieutenant Higgins's quarters, and did not appear until the next morning.

Private Turner (p. 135) was absent from the quarters, sleeping at Lieutenant Hayes's.

Private Kirkpatrick (p. 133) was in the hospital.

Private John Brown (p. 151) was asleep in the baker shop.

Private Elmer Brown (p. 151) was asleep in the corral.

Private Newton (p. 140) was asleep in the quarters of Lieutenant West.

Private Jones (p. 139) was asleep in Captain Lyon's quarters.

Private Mapp (p. 141) was asleep in the bake shop.

Private Halley (p. 144) was asleep in the corral.

Private John Henry (p. 144) was in the quartermaster's corral.

Private Charles W. Hawkins (p. 140) was in town on a pass.

In addition to these absentees there were absent on duty within the post at the guardhouse four noncommissioned officers.

Private Miller was out on a pass.

I have heard, and other Senators have heard, a thousand times the report of the first sergeant—"All present or accounted for." The Senator from Ohio [Mr. DICK] in his own way and in his own experience has heard it.

I know that I have already wearied the Senate, but I have felt compelled to quote freely from the record evidence and have drawn only from the testimony to sustain my conclusions and belief that each and every member of this battalion of the Twenty-fifth Infantry is absolutely innocent of the charge of shooting up the city of Brownsville and, consequently, all are guiltless of any "conspiracy of silence," for which reasons they were discharged without honor in November, 1906; and for these reasons I joined with my colleagues from West Virginia, Ohio, and Indiana in the minority report of your committee and the supplemental report attached thereto signed by the Senator from Ohio and myself.

The VICE-PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A joint resolution (S. R. 74) suspending the commodity clause of the present interstate-commerce law.

Mr. ELKINS. I ask that the unfinished business be laid aside temporarily.

The VICE-PRESIDENT. The Senator from West Virginia asks that the unfinished business be temporarily laid aside. Without objection, it is so ordered. The Senator from Connecticut will proceed.

Mr. BULKELEY. I should feel, Mr. President and Senators, that I had fallen short of my duty if I failed to record here the honorable record of the Twenty-fifth United States Infantry, as well as that of the Twenty-fourth, and the Ninth and Tenth Cavalry, for they all do honor to the United States Army, in which they appear not only as soldiers, but as worthy representatives of their race. I ask to include here, without reading, the official records as furnished me by the War Department:

#### OFFICIAL RECORD OF THE TWENTY-FIFTH REGIMENT, UNITED STATES INFANTRY.

The Twenty-fifth Regiment of Infantry was organized April 20, 1869, by the consolidation of the Thirty-ninth and Fortieth Regiments of Infantry, under the act approved March 3, 1869. From April, 1869, to May, 1870, the regiment served in Louisiana and Mississippi. From May, 1870, to May, 1880, it was stationed in Texas along the Rio Grande frontier. A part of the regiment was sent to the Indian Territory in 1872, serving there to May, 1880, when the entire regiment was sent to South Dakota. It garrisoned posts on the Missouri River to May, 1888, four companies being stationed at Fort Snelling, Minn., from November, 1882, to May, 1888, when the entire regiment was sent to Montana, serving there until April, 1898. It was stationed at Chickamauga Park, Ga., to May, 1898; at Tampa, Fla., to June, 1898; in Cuba, participating in the Santiago campaign, to August, 1898; in New York to September, 1898, and in Arizona and New Mexico, to June, 1899.

Four additional companies were organized at Fort Logan, Colo., in October, 1898, and served there to June, 1899, when the headquarters and eight companies left for the Philippine Islands, the remaining four companies being stationed in Arizona and Texas to September, 1900, when they were sent to the Philippine Islands.

The entire regiment returned to the United States in August, 1902, headquarters and eight companies being sent to Fort Niobrara, Nebr., and four companies to Fort Reno, Okla. Two companies were on temporary duty at Fort Des Moines, Iowa, from December, 1903, to April, 1904.

On July 23, 1906, headquarters and four companies were sent from Fort Reno, Okla., to Fort Bliss, Tex., where they are now stationed. Four companies left Fort Niobrara, Nebr., for Fort McIntosh, Tex., on



the same date, and are now stationed there. Companies B, C, and D of the regiment left Fort Niobrara, Nebr., July 23; arrived at Fort Brown, Tex., July 28, 1906, and left for Fort Reno, Okla., August 25, 1906. Company A was on temporary duty at Fort Washakie, Wyo., from April 1 to September 7, 1906, when it left for its present station, Fort Reno, Okla.

#### ACTIONS, ETC., IN WHICH THE REGIMENT OR PORTIONS THEREOF HAVE PARTICIPATED.

Melvin Station, Tex., May 21, 1871; Central Station, Tex., July 28, 1872; Eagle Springs, Tex., April 27, 1873; Central Station, Tex., October 1, 1873; Carrizo Mountains, Tex., May 18, 1874; Wichita Agency, Ind. T., August 22 and 23, 1874; Carrizo Mountains, Tex., February 18, 1876; Mackenzie's expedition into Mexico, June, 1878; near Salt Lake, Tex., July 25, 1879; Santiago campaign, June and July, 1898; El Caney, Cuba, July 1, 1898; San Juan Hill, Cuba, July 1-3, 1898; near San Mateo, P. I., August 12, 1899; near La Loma, P. I., October 9, 1899; O'Donnell, P. I., November 18, 1899; San Fernando de Rivera, P. I., December 7, 1899; Botolon, P. I., December 8, 1899; Iba, P. I., December 9, 1899, and January 1, 1900; Comansi and Iba, P. I., January 5 and 6, 1900; Mabalacat, P. I., January 6, 1900; near Castillejos, P. I., January 29, 1900; Tawi Tawi Island, P. I., January 29, 1900; Subig, P. I., February 9, 1900; Botolon, P. I., February 18, 1900; near Botolon, P. I., February 22, 1900; Candelaria, P. I., May 6, 1900; Palauig, P. I., May 13, 1900; Cabangan, P. I., July 15, 1900; near San Antonio, P. I., September 18, 1900; Subig, P. I., September 18, 22, and 23, 1900; Castillejos, P. I., September 25, 1900; near Castillejos, P. I., October 25, 1900; near Subig, P. I., November 10, 1900; near Equia, P. I., February 24, 1901; near Botolon, P. I., July 2, 1901.

The regiment lost in Cuba—1 officer and 7 men killed and 3 officers and 27 men wounded; and in the Philippine Islands, 1 officer and 8 men killed and 22 men wounded.

#### OFFICIAL RECORD OF THE TWENTY-FOURTH REGIMENT UNITED STATES INFANTRY.

This regiment was organized November 11, 1869, by the consolidation of the Thirty-eighth and Forty-first regiments of Infantry, as provided for under the act of March 3, 1869.

It served in Texas from November, 1869, to December, 1880; in the Indian Territory to May, 1888; in New Mexico and Arizona to October, 1896; in Utah to April, 1898; in Florida to June, 1898; in Cuba to September, 1899; in Utah and Wyoming to May, 1899; in California to July, 1899; in the Philippine Islands to August, 1902 (four companies remained in Washington, Alaska, and Montana to August, 1902); in Montana from August, 1902, to January, 1906; in the Philippine Islands to February, 1908, and is now en route to the United States since February 15, 1908, and is to take station at posts in New York.

#### ACTIONS, ETC., IN WHICH THE REGIMENT OR PORTIONS THEREOF HAVE PARTICIPATED.

Scout on the Rio Grande and Pecos, Tex., January 3 to February 6, 1870; near Fort McKavett, Tex., July 31, 1871; near Fort McKavett, Tex., September 1, 1871; on the La Pendencia, Tex., May 20, 1872; near Rattlesnake Springs, Tex., August 6, 1880; Cedar Springs, Ariz., May 11, 1889; operations against Santiago, Cuba, June 22 to July 17, 1898; San Juan Hill, Cuba, July 1 to 3, 1898; San Mateo, P. I., August 12, 1899; near Mexico, P. I., September 27, 1899; Santa Ana, P. I., October 6, 1899; St. Augustin, P. I., October 7, 1899; Arayat, P. I., October 12, 1899; San Luis, P. I., December 3, 1899; Naguilian, P. I., December 7, 1899; Talavera road, P. I., December 28, 1899; Bongabong, P. I., December 29, 1899; near Allaga, P. I., February 11, 1900; near San Vicente, P. I., April 4, 1900; near San Quintan, P. I., May 5, 1900; near Lupao, P. I., July 3, 1900; Manicling, P. I., July 4, 1900; near Talavera, P. I., July 31, 1900; near Manicling, P. I., September 13, 1900; near Buloc, P. I., October 10, 1900; Pinog, P. I., October 14, 1900; Tabontabon, P. I., July 24, 1906; Guelern Barrio, P. I., August 17, 1906; Anibongan, P. I., September 10, 1906; Mount Lobl, P. I., September 15, 1906.

#### OFFICIAL RECORD OF THE NINTH UNITED STATES CAVALRY.

Organized under the act of July 28, 1866, and was raised mainly in Louisiana and from recruits in Kentucky. It served in Louisiana to April, 1867; in Texas to December, 1875; in New Mexico to November, 1881; in Kansas, Indian Territory, and Texas to April, 1885; in Nebraska and Wyoming to April, 1898; in Florida and in Cuba to August, 1898; in New York to October, 1898; in Arizona and Utah to August, 1900; in Philippine Islands to October, 1902; in California and Washington to October, 1904; in Kansas and Missouri to March, 1907, and since then in the Philippine Islands.

#### ACTIONS, ETC., IN WHICH THE REGIMENT, OR PORTIONS THEREOF, HAVE PARTICIPATED.

Howards Well, Tex., October 1, 1867; Eagle Springs, Tex., December 5, 1867; near Fort Lancaster, Tex., December 26, 1867; Fort Quitman, Tex., January, 1868; Horse Head Hills, Tex., September 14, 1868; Mulberry Creek, Kans., January 29, 1869; Pecos and Johnson Rivers, Tex., June 7, 1869; Salt Fork of Brazos River, Tex., September 16, 1869; Brazos River, Tex., September 20 and 21, 1869; headwaters of Brazos River, Tex., October 28 and 29, 1869; headwaters of Llano River, Tex., November 24, 1869; Johnsons Mail Station, Tex., December 25, 1869; scout on Rio Grande and Pecos, Tex., January 3 to February 6, 1870; scout in Guadalupe Mountains, Tex., January 6 to February 10, 1870; Delaware Creek, Tex., January 20, 1870; San Martine Springs, Tex., April 3, 1870; Crow Springs, Tex., April 25, 1870; Kickapoo Springs, Tex., May 19 and 20, 1870; Bass Canyon, Tex., May 29, 1870; Staked Plains, Tex., June 30, 1871; headwaters of Concho River, Tex., July 22, 1871; near Fort McKavett, Tex., July 31, 1871; near Fort McKavett, Tex., September 1, 1871; Howards Well, Tex., April 20, 1872; on the La Pendencia, Tex., May 20, 1872; near Fort Sill, Ind. T., October 4, 1874; near Ringgold Barracks, Tex., January 26, 1875; near Ringgold Barracks, Tex., January 27, 1875; Florida Mountains, N. Mex., September 15, 1876; Florida Mountains, N. Mex., January 23, 1877; Sierra Bocas Grande, Mexico, January 28, 1877; Dog Canyon, N. Mex., August 5, 1878; Cormedons Mountains, N. Mex., January 15, 1879; Ojo Caliente, N. Mex., March 8, 1879; Black Range of Miembres Mountains, N. Mex., May 29, 1879; Ojo Caliente, N. Mex., September 4, 1879; Las Animas River, N. Mex., September 18, 1879; near Ojo Caliente, N. Mex., September 28, 1879; near Canada Alamosa, N. Mex., September 30, 1879; Cuchillo Negro Mountains, N. Mex., September 29 to October 1, 1879; Milk River, Colo., October 2 to 5, 1879; White River, Colo., October 10, 1879; San Guzman Mountains, Mexico, October 27, 1879; Rio Puerco, N. Mex., January 12, 1880; San Mateo Mountains, N. Mex., January 17, 1880; Cabello Mountains, N. Mex., January 30, 1880; San Andreas Mountains, N. Mex., Feb-

ruary 3, 1880; Sacramento Mountains, N. Mex., February 28, 1880; San Andreas Mountains, N. Mex., April 5, 1880; San Andreas Mountains, N. Mex., April 6 to 9, 1880; camp near South Fork, N. Mex., April 16, 1880; Mescalero Agency, N. Mex., April 16, 1880; near Dog Canyon, N. Mex., April 17, 1880; Tularosa, N. Mex., May 14, 1880; Cooks Canyon, N. Mex., June 5, 1880; Aqua Chiquita, N. Mex., September 1, 1880; near Canada Alamosa, N. Mex., January 24, 1881; Candelaria Mountains, Mexico, February 5, 1881; Mexican line near Fort Cummings, N. Mex., April 29, 1881; Alamo Canyon, N. Mex., July 17, 1881; Arena Blanca, N. Mex., July 19, 1881; White Sands, N. Mex., July 25, 1881; San Andreas Mountains, N. Mex., July 26, 1881; Monica Springs, N. Mex., August 3, 1881; Carrizo Canyon, N. Mex., August 12, 1881; Rio Cuchillo Negro, N. Mex., August 16, 1881; near San Mateo Mountains, N. Mex., August 16, 1881; McEwer's Ranch, N. Mex., August 19, 1881; South Pass of Dragoon Mountains, Ariz., October 4, 1881; Crow Agency, Mont., November 5, 1887; near Pine Ridge Agency, S. Dak., December 30, 1890; Drexel or Catholic Mission, near White Clay Creek, S. Dak., December 30, 1890; operations against Santiago, Cuba, June 22 to July 17, 1898; San Juan Hill, Cuba, July 1 to 3, 1898; near Palanog, P. I., October 7, 1900; Tagilag, P. I., October 9, 1900; near Pasacao, P. I., October 11, 1900; Tagilag, P. I., October 11, 1900; Camalig, P. I., October 16, 1900; Camalig, P. I., October 18, 1900; Tagilag, P. I., October 19, 1900; near Tagilag, P. I., October 26, 1900; near Rurug, P. I., October 28, 1900; Tagilag, P. I., October 29, 1900; Camalig, P. I., November 2, 1900; near Libog, P. I., November 14, 1900; near Florista, P. I., November 24, 1900; Bantonan, P. I., November 24, 1900; Umban, P. I., November 26, 1900; Guinobatan, P. I., December 2, 1900; near Guinobatan, P. I., December 6, 1900; near Guinobatan, P. I., December 15, 1900; near Guinobatan, P. I., December 17, 1900; near Guinobatan, P. I., December 19, 1900; Ogson Barrio, P. I., December 27, 1900; near Camaligan, P. I., December 30, 1900; near Minalabac, P. I., January 2, 1901; near Balign, P. I., January 4, 1901; near Bololo, P. I., January 7, 1901; near Bololo, P. I., January 22, 1901; near Sipocot, P. I., January 26, 1901; near San Isidro, P. I., January 27, 1901; near Bololo, P. I., January 31, 1901; San Fernando Mountains, P. I., February 9, 1901; Bubsan, P. I., February 15, 1901; near Guinobatan, P. I., February 16, 1901; Tagilag, P. I., February 22, 1901; near Bulason, P. I., February 25, 1901; near Bonga, P. I., February 26, 1901; near Tinambag, P. I., March 18, 1901; near Tinambag, P. I., March 22, 1901; Bonga River, P. I., March 28, 1901; near Lumagan, P. I., May 9, 1901; Bonga River, P. I., May 12, 1901; near Lupi, P. I., May 13, 1901; Guinobatan, P. I., May 15, 1901; Tanarg, P. I., May 19, 1901; Mataray, P. I., May 22, 1901; near Alit, P. I., May 22, 1901; Ragay, P. I., May 27, 1901; near Catbalogan, P. I., May 27, 1901; Gandara River, P. I., May 30, 1901; near Ragay, P. I., May 31, 1901; near Donsol, P. I., June 4, 1901; River Bonga, P. I., June 27, 1901; Mutiong, P. I., July 16, 1901; near Mutiong, P. I., July 23, 1901; near Gapo, P. I., November 12, 1901; near San Luis, P. I., February 6, 1902.

#### OFFICIAL RECORD OF THE TENTH REGIMENT UNITED STATES CAVALRY.

Regiment was organized under the act of July 28, 1866. Headquarters of the regiment was established at Fort Leavenworth, Kans., in August, 1866, and regiment was mainly recruited in Kansas and in other adjoining States. The organization of the regiment was not fully completed until the spring and summer of 1867.

The regiment served in Kansas and Indian Territory from 1866 to May, 1873; in Texas and Indian Territory to April, 1885; in Arizona and New Mexico to May, 1892; in Dakota and Montana to April, 1898; in Georgia and Florida to June, 1898; in Cuba to August, 1898; in New York to October, 1898; in Alabama to January, 1899; in Texas to April, 1899; in Cuba to April, 1902 (four troops served in Philippine Islands from April, 1901, to August, 1902); in Nebraska and Wyoming to March, 1907, and since then in the Philippine Islands.

#### ACTIONS IN WHICH THE REGIMENT OR PORTIONS THEREOF HAVE PARTICIPATED.

Saline River, Kans., August 2, 1867; Prairie Dog Creek, Kans., August 21 to 22, 1867; Saline River, Kans., September 16, 1867; Big Sandy Creek, Colo., September 15, 1868; Beaver Creek, Kans., October 18, 1868; near Fort Dodge, Kans., November 19, 1868; near Clear Creek, Tex., April 6, 1870; near Camp Supply, Ind. T., June 9, 1870; Snake Creek, Ind. T., June 10, 1870; Camp Supply, Ind. T., June 11, 1870; Fort Sill, Ind. T., April 27, 1871; near Red River, Tex., May 12, 1871; Fort Sill, Ind. T., May 17, 1871; Foster Springs, Ind. T., September 19, 1871; Deep River, Ind. T., July 12, 1872; Otter Creek, Ind. T., July 22, 1872; near Pease River, Tex., August 31, 1873; Elm Creek, Tex., December 5, 1873; Home Creek, Tex., February 2, 1874; Double Mountain, Tex., February 5, 1874; between Red River and Big Wichita, Tex., May 2, 1874; Wichita Agency, Ind. T., August 22 to 23, 1874; expedition from Fort Sill, Ind. T., October 21 to November 8, 1874; North Fork of Canadian River, Ind. T., December 20, 1874; near Cheyenne Agency, Ind. T., April 6, 1875; Battle Point, Tex., May 5, 1875; near Pecos River, Tex., November 2, 1875; near Saragossa, Mexico, July 30, 1876; Lake Quemado, Tex., May 4, 1877; near Saragossa, Mexico, September 29, 1877; Sierra del Carmen, Mexico, November 29 to 30, 1877; near Salt Lake, Tex., July 25, 1879; Van Horn Mountains, Tex., September 16, 1879; near Pecos Falls, Tex., April 3, 1880; Shakedown Springs, Tex., April 9, 1880; Mescalero Agency, N. Mex., April 16, 1880; Sacramento Mountains, N. Mex., April 20, 1880; Rocky Ridge, Tex., July 30, 1880; Alamo Springs, Tex., August 3, 1880; Camp Safford, Tex., August 4, 1880; Guadalupe Mountains, Tex., August 6, 1880; near Rattlesnake Springs, Tex., August 6, 1880; Rattlesnake Canyon, Tex., August 6, 1880; Ojo Caliente, N. Mex., October 28, 1880; Penito Mountains, Mexico, May, 1880; Black River Mountains, Ariz., October 18, 1886; Rincon Mountains, Ariz., June 11, 1887; Cedar Springs, Ariz., May 11, 1889; near mouth of Cherry Creek, Ariz., March 7, 1890; operations against Santiago, Cuba, June 22 to July 17, 1898; Las Guasimas, Cuba, June 24, 1898; Tayabacoa, Cuba, June 30, 1898; San Juan Hill, Cuba, July 1 to 3, 1898; near Calbayog, P. I., May 27, 1901; near Masalacot, P. I., February 21, 1902; near Quinapundan, P. I., February 25, 1902; near Quinapundan, P. I., March 2, 1902; near Quinapundan, P. I., March 4, 1902; near Quinapundan, P. I., March 5, 1902; Mount Masalacot, P. I., March 14, 1902; Quinapundan, P. I., March 14, 1902; near Quinapundan, P. I., March 20, 1902.

Mr. BULKELEY. It is as honorable a record of service on the frontier, in Cuba, and in the Philippines as any soldiers of the Army possess. If character and good service are entitled to any consideration in the case of any accused, the good character of these men established by the evidence of their own officers, their long, faithful, and honorable service, both in war and in peace, entitle them to our consideration here.

The advent of the negro soldiers in the Army, Mr. President, does not date in these late years; they were alike found in the ranks in colonial as well as modern times, and history records that in the Boston massacre, March 5, 1770, regarded as "the first act in the drama of the American Revolution," Crispus Attucks—not a soldier, as described by my distinguished friend, the Senator from Missouri, but a slave—was the first to fall. He was buried from Faneuil Hall with the other victims of that event. That event is celebrated down to this day, almost a hundred and forty years since; for a long time on the anniversary of the day it occurred, and after the close of the Revolution on the Fourth of July, as the more appropriate day to commemorate an event which really led up to dissolving the relations with the mother country.

At Bunker Hill the shot which laid low the British commander as he mounted the redoubt shouting, "The day is ours," was fired by Peter Salem, once a negro slave, fighting in the ranks with his white comrades. You will find them brave, patriotic, and heroic, both in victory and defeat, in the eight years' struggle for the new Republic from Bunker Hill to Yorktown.

In the war of 1812 negroes formed their full proportion of the crew of the fleet under Commodore Perry. A writer says:

Perry speaks highly of the bravery and good conduct of the negroes who formed a considerable part of his crew. They seemed absolutely insensible to danger.

Another, Commander Shaler, says:

The name of one of my poor fellows ought to be registered in the book of fame.

In the civil war negro troops could be found in both armies as they followed the flag of the contending hosts with loyalty until the surrender at Appomattox.

In the war with Spain the regiments of colored troops of the Regular Army were at the front in almost every engagement, and at the surrender the Twenty-fifth Infantry and the Tenth Cavalry were accorded an honorable position in the closing ceremonies of the war.

On the frontier of our own country and in the newly acquired possessions of the islands of the sea they have filled their places with credit and honor.

From the conclusion reached both as to the nonparticipation of the members of the battalion in the shooting up of Brownsville and the consequent injustice of their dismissal from the Army without honor, and the disabilities carried with such dismissal, I naturally turn to some proper means of relief and restoration. The President, in his last message on this question, states that Executive authority has lapsed by reason of the time limit and that legislative action is necessary to restore such authority. For many months applications for reenlistment in the Army, or for restoration, have been in the hands of the President or with the War Department, with the only proof the soldiers could furnish of their innocence—their own affidavits and certificates of good character and faithful service from their officers—but not one has been acted upon. The President has repeatedly called upon these soldiers to prove their innocence to his satisfaction—to a mind already confirmed in conviction of undoubted guilt—as a condition of restoration and so expressed over and over again. This requirement imposed the additional burden of removing this almost insurmountable bias.

The bill S. 6206, introduced by the Senator from Missouri, simply restores to the President the powers which have lapsed by reason of time and furnish no adequate relief to the soldier, but reenacts conditions with which it is absolutely impossible to comply.

The Congress has the power under the Constitution "to raise and support armies" and "to make rules for the government of the land and naval forces." At every session of the Congress it is exercising these powers in many ways, as in correcting military records of soldiers where an apparent injustice is discovered. I can see no reasons why like action can not properly be taken here, if the Congress is satisfied that the results of the long and patient investigations discloses the facts as I have reviewed and as disclosed in the testimony.

Mr. FULTON. Mr. President, will the Senator allow me just a word right here?

Mr. BULKELEY. Certainly.

Mr. FULTON. In view of the fact that I have taken issue with the Senator in his conclusions as to whether or not any of these soldiers participated in this shooting, I wish to say just a word at this time as to, my views of what should be done.

Mr. BULKELEY. I will be through in a moment. I should like to close up. I do not care to be interrupted at this time.

Mr. FULTON. I do not wish to say anything if it will interrupt the Senator in the course of his speech.

Mr. BULKELEY. I will be through in about a moment.

Mr. FULTON. All right.

Mr. BULKELEY. The bill S. 5729, introduced by the Senator from Ohio, protects the Government in the conditions imposed for reenlistment if complied with and requires the only evidence outside of the records of the committee's investigation which the soldiers can possibly furnish. Such legislation, I believe, is within our power and I trust will be enacted before the close of this Congress.

Permit me, in closing, Mr. President and Senators, to recall the words of a former commander of the Army, commenting upon the efforts that were making in the Congress to correct an injustice to a high officer of the Army during the civil war.

It was during the efforts that were made to restore to the Army Gen. Fitz-John Porter, who had been removed by court-martial or by order, and General Schofield, a great soldier and great commander, said (Schofield's Forty Years in the Army, pp. 465-466):

It suggests the reflection that even a Senator of the United States might better form his own opinions rather than adopt those even of the highest authority, when the only question involved is one of justice and not one of public policy, in which latter case differences of opinion must of necessity be reconciled for the purpose of securing unity of action.

Mr. President, I do not ask for these soldiers either pardon or clemency, but vindication from the charge of crime for which they have been punished without a hearing or the semblance of a trial by a civil or military tribunal and of which I am convinced they are absolutely innocent, but rather relief from the stigma of dismissal from the Army without honor and restoration to the rights and privileges of which they have been deprived and which can only be restored to them by the consideration and action of the Congress.

Mr. FULTON. Mr. President, as I do not expect to make a speech on this subject, and in view of the fact that I took issue with the Senator from Connecticut [Mr. BULKELEY] in the conclusion he had reached touching the question whether or not any member of this battalion was guilty of this shooting, I feel I ought to say that I do agree with the Senator from Connecticut that the bill which has been proposed by the Senator from Ohio [Mr. FORAKER] is nevertheless the proper measure of relief, because while I became satisfied beyond any question in my own mind that this shooting was done by some few members of this organization, yet there is absolutely no proof whatever of the identification of any individual, and I can not bring my mind to consent to the proposition that because some few may have been guilty that all of these members, who were unquestionably innocent, should be made to suffer.

Nor do I believe that the burden of proof should be put on them. That is repugnant to all of the laws which we have looked upon as necessary for the protection of individual rights and the liberty of the individual. I think that where they purge themselves by making a proper affidavit, disclaiming any connection with the affray, they should be allowed to reenlist. I understand that in substance is what the Senator from Ohio has provided in his bill.

Mr. FORAKER. That is in substance the bill I have proposed. But it has also this very important provision in the second section of it, which I did not stop to comment upon the other day. There is a provision that nothing in the proposed act contained shall be construed to prevent the prosecution of these men, civilly or by court-martial, after they shall have been reenlisted, if at any time there shall be offered the slightest evidence tending to identify anybody as guilty. So that if they should all be reenlisted, as my measure contemplates, they will then be back in the Army, be under the command of their officers, where they can be kept under surveillance, if that be necessary, and in a situation where they can be ordered before a court-martial at any moment by the President or anybody else having authority to order a court-martial.

It seems to me, looking at it upon the theory that some of the men may be guilty, in which theory I do not believe at all, nevertheless the proposition embraced in my measure is the one that ought to be adopted.

#### PHILIPPINE COMMISSION.

The VICE-PRESIDENT laid before the Senate the bill (H. R. 17516) to increase the membership of the Philippine Commission by one member.

Mr. LODGE. The bill is identical with the measure passed by the Senate a few weeks ago, and I ask that it may be now considered.

The bill was read the first time by its title and the second time at length, as follows:

Be it enacted etc., That the number of Commissioners constituting the Philippine Commission is hereby increased by one additional member, making the Commission consist of nine members. Said additional



member shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive the same salary and emoluments as is now, or may hereafter, be prescribed by law.

SEC. 2. That the President is hereby authorized in his discretion to create by Executive order, and name, a new executive department in the Philippine government, and to embrace therein such existing bureaus as he may designate in the order; and in his appointment of any commission member he shall specify in his message to the Senate the department, if any, of which the appointee shall be the secretary.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### ORDER OF BUSINESS.

Mr. CULLOM obtained the floor.

Mr. OWEN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Oklahoma?

Mr. CULLOM. I do.

Mr. OWEN. I ask that the "restrictions bill," so called, Calendar No. 588, be made a special order on the 8th instant, immediately after the morning business, and be disposed of, with its amendments, on that day.

Mr. LODGE. What bill is it?

Mr. OWEN. Calendar No. 588, the so-called "restrictions bill." It is a local bill for Oklahoma.

The VICE-PRESIDENT. The Senator from Oklahoma asks unanimous consent that the following bill—

Mr. CULBERSON. I have no objection to that, but I do not know whether it is in order, inasmuch as Senate joint resolution 74 is now the unfinished business. If it can be done, I shall be glad to see it done.

Mr. WARREN. I wish to suggest that I shall object to any more special orders being made or special hours being given, except it may be, as this was formerly given, i. e., subject to appropriation bills. I shall have to object to any request unless it be coupled with a reservation for the consideration of appropriation bills.

Mr. OWEN. I ask for this order subject to appropriation bills.

Mr. LODGE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Massachusetts?

Mr. CULLOM. I do.

Mr. LODGE. We now have a unanimous-consent agreement, which is to be disposed of on Wednesday, and it seems to me at this stage of the session we ought not to mortgage our time ahead by special orders. The bill may be taken up, and we can agree on a time to vote, but this is a request for a special order, which would shut out everything else.

The VICE-PRESIDENT. The Senator from Oklahoma asks unanimous consent that the bill (H. R. 15641) for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes, be taken up for consideration immediately after the close of the routine morning business on Friday, the 8th instant, and that pending amendments and amendments to be offered and the bill itself be voted upon before adjournment on that day.

Mr. WARREN. I call the attention of the Vice-President to the fact that he has failed to include "subject to appropriation bills."

The VICE-PRESIDENT. Not to interfere with appropriation bills. Is there objection?

Mr. TELLER. I will not object to the bill being made the special order, but I object to that part of the request which provides that the bill shall be disposed of on that day.

Mr. OWEN. I yield to the suggestion of the Senator from Colorado, Mr. President.

The VICE-PRESIDENT. The Senator from Oklahoma—

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Ohio?

Mr. CULLOM. Certainly.

Mr. FORAKER. I rise to say that I do not want for a moment to stand in the way of the bill of the Senator from Oklahoma [Mr. OWEN], but I do not want to see the Senate making special orders indefinitely for the future. I have a bill of my own which I want to get regularly before the Senate as soon as I can, and I am afraid that if we do not agree to vote on the bill of the Senator from Oklahoma on that day, but simply make it the special order, we may be indefinitely tied up with that measure as the unfinished business.

So I do not like to agree to the request, unless the Senator from Colorado will waive his objection to that part of it which provides that we shall vote on the bill that day.

Mr. CULLOM. Mr. President, I move that the Senate proceed to the consideration of executive business.

The VICE-PRESIDENT. The Senator from Illinois moves—

Mr. WARREN. Will the Senator from Illinois withhold the motion for a moment?

Mr. CULLOM. I yield to my colleague on the Committee on Appropriations.

Mr. WARREN. I wish to say that I shall endeavor to have the Senate take up the agricultural appropriation bill immediately after the morning business to-morrow.

Mr. FORAKER. I call the attention of the Senator from Wyoming to the fact that there is a notice on the Calendar that the Senator from Missouri [Mr. WARNER] is to speak in the morning on the Brownsville matter if he is able, and, if not, the Senator from Massachusetts [Mr. LODGE] is to read to the Senate his remarks. The reason why—

Mr. WARREN. I do not care to change the notice I have given, but I will say to the Senator that I have never so far had any difficulty, and I do not propose to have any hereafter with any Senator who wished to go on with a speech. I merely give the notice. I think there will be no misunderstanding and we will all agree.

Mr. FORAKER. I so understand. I was merely calling the attention of the Senator to the fact that such a notice had been given.

#### EXECUTIVE SESSION.

Mr. CULLOM. I insist upon my motion, Mr. President.

The VICE-PRESIDENT. The Senator from Illinois moves that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were reopened, and (at 4 o'clock and 47 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, May 5, 1908, at 12 o'clock meridian.

#### NOMINATIONS.

*Executive nominations received by the Senate May 4, 1908.*

##### PROMOTIONS IN THE ARMY.

##### Coast Artillery Corps.

Lieut. Col. William B. Homer, Coast Artillery Corps, to be colonel from May 1, 1908, vice Morris, appointed brigadier-general.

Maj. Warren P. Newcomb, Coast Artillery Corps, to be lieutenant-colonel from May 1, 1908, vice Homer, promoted.

Capt. Clint C. Hearn, Coast Artillery Corps, to be major from May 1, 1908, vice Newcomb, promoted.

First Lieut. Rex Van Den Corput, Coast Artillery Corps, to be captain from May 1, 1908, vice Hearn, promoted.

Second Lieut. Chester J. Goodier, Coast Artillery Corps, to be first lieutenant from May 1, 1908, vice Corput, promoted.

##### PROMOTIONS IN THE NAVY.

Pay Inspector Thomas J. Cowie to be a pay director in the Navy from the 2d day of May, 1908, vice Pay Director Samuel R. Colhoun, retired.

##### POSTMASTER.

##### VIRGINIA.

Frank D. Lumpkin to be postmaster at Danville, Pittsylvania County, Va., in place of Champ T. Barksdale. Incumbent's commission expired June 25, 1906.

#### CONFIRMATIONS.

*Executive nominations confirmed by the Senate May 4, 1908.*

##### UNITED STATES ATTORNEY.

James W. Freeman, of Montana, to be United States attorney for the district of Montana.

##### CONSUL.

Carl F. Delchman, of Missouri, to be consul of the United States of class 7 at Tamsui, Formosa.

##### RECEIVER OF PUBLIC MONEYS.

Thomas R. Hamer, of Idaho, to be receiver of public moneys at Blackfoot, Idaho.

##### POSTMASTERS.

##### ILLINOIS.

Louie Taylor to be postmaster at Westville, Vermillion County, Ill.

##### NEW YORK.

Albert Weed to be postmaster at Ticonderoga, Essex County, N. Y.

##### WISCONSIN.

William Vanzile to be postmaster at Crandon, Forest County, Wis.